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TWO

BOOKS

In *DEFENCE* of the

BISHOPS

VOTING

In Capital Cases in Parliament.

THE FIRST ENTITULED,

The HONOURS of the Lords Spiritual

ASSERTED, *&c.*

THE OTHER,

The RIGHTS of the Bishops *to Judge in* Capital Cases *in Parliament, Cleared.*

Being a Full Answer to *Two Books* Lately Published; The First *Entituled, A Letter from a Gentleman to his Friend,* &c. The other, *A Discourse of the* Peerage *and* Jurisdiction *of the* Lords Spiritual *in Parliament; Endeavouring to shew the Contrary.*

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BISHOP

TO THE
READER.

TIS not unknown to any in our Engliſh Iſrael, *that there are yet here amongſt us ſome Remainders of the Men of* 42. *and that the Diſeaſe it ſelf ſticks as cloſe to Them, and particularly to ſome eminent Parts of the Nation where they ſkul, and for the preſent where they make their Refuge (for in the Countries they are more eaſily diſcovered) as the Leproſie did under the Law to the very Walls of the Houſe; and it ſeems to be as hardly removed as that Levitical Diſtemper, which ſome Naturaliſts and Phyſitians ſay cannot be done but only by Blood, and that is the thing which their fingers itch to be at again, Witneſs their late Rebellious Commotions in* Scotland, *which had they taken effect, there would not have been wanting thoſe who would have juſtified them: Nay, I ſpeak what I know, and have heard, did excuſe them, as a poor People Oppreſt; and* You know Oppreſſion makes a Wiſe man Mad, *eſpecially at this time of the year, the* Seaſon being a little Hot. *I muſt confeſs I am no ſtranger to the Men or their ways, having been for many Years laſt paſt, a ſtrict Obſerver of them, though I thank God I have always, and do ſtill from my Heart, Abhor and Deteſt any Confarreation with them, or any the leaſt Approbation of their Actings or Principles; for I have diſcovered ſo much of ill Nature, Cenſoriouſneſs, Covetouſneſs, Self-ſeeking, and want of Charity in this ſort of Men, that it did always give me a great ſuſpition that their Cauſe was Evil; eſpecially reflecting upon the Means which they made uſe of to carry on their pretended Reformation, (viz.) The throwing down of Epiſcopacy, a Government of Gods Church, as Antient in this Nation as Chriſtianity it ſelf; the takeing away, and Aboliſhing the beſt of Liturgies either Ancient or Modern, a juſtified taking up of Arms againſt their Native Soveraign,* the Lords Annointed, *to whom, and to whoſe Anceſtors they and their Fore-fathers had Sworn Allegiance: the Plundering and Deveſting of the Kings* ***moſt faithfull Subjects of their*** *Goods, Eſtates and Lands;*

for their dutiful adherence to the best of Kings who ever raign'd in this our Isle. And lastly the embrewing their Violent, Rebellious, and Wicked hands in His most Sacred Blood: a course which the Moral Heathen would Blush to take, to save his Country ready to be Lost and Ruined, and yet these men in a Bad Cause to pretend Conscience and Religion, which heretofore Conquered the Heathen World, not by resisting though they were able and wanted not Numbers to do it, but by their Sufferings; for these Men I say to pretend Conscience and Religion, Clament Melicerta Perisse--Frontem de rebus. *These are the Men I Confess against whom the following Discourse is aim'd: For I very well know that it lies not in the Power or Wit of these, though they gladly would and do flatter themselves perhaps in this their Folly that they may be able to Cajole any Persons of Loyal Hearts or Principles, to take part with, or appear against the Bishops in the present Controversie: No, Gentlemen believe it, you smell too strong, and you are too well known, and I can never believe the contrary, till I see you perswade them to carry in once more their Plate to* Guild-Hall, *for the Carrying on Your Unholy Cause, or to shut up their Shops, as you know who did heretofore, and go with you to Releive* Glocester. Atqui parvas spes habet Troja si tales habet.

And so I Refer the Reader to the Perusal of the Book.

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THE HONOURS AND RIGHTS OF THE CLERGY *ASSERTED*: And *PRIVILEDGES* of the BISHOPS To VOTE in Capital CASES in Parliament *VINDICATED*, &c.

CHAP. I.

The Honour of the Prieſthood aſſerted by the Law of Nature and Levitical Law; the Immunities thereof under Primitive Chriſtianity. The returns of Gratitude to God for the Bleſſings and Labours of the Miniſters thereof in the Reformation of the Church, in the laſt and preſent Age wherein we Live; together with ſome cloſe Reflections thereupon.

REligion a thing ſo Excellent, (that to be careleſs in it, or neglectful of it, is accounted a great diſreputation and ſhame to any Party or Perſon) hath ever had ſince there were Profeſſors of it, and that is ſo long as there have been men in the World, a ſelect number of Perſons, who have been the Miniſters of it. Theſe men dureing the firſt times, and the Adminiſtration of the Law of Nature, were the Firſt Born, and they both Princes and Prieſts too; ſo that the Adminiſtration of Juſtice, and the Performance of Religious Worſhip we find then to have been linked together in one and the ſame Perſon, *Adam*, *Seth*, *Enoch*, and *Noah*, and other the *Antediluvian* Patriarchs were in their Order and Succeſſion both Kings and Prieſts alſo; as any perſon may be ſatisfied, if he will peruſe thoſe Writers of the *Jewiſh* Antiquities *Philo* and *Joſephus*: Afterwards, when the Law was given by poſitive Precepts to the Sons of men, one of the Twelve Tribes (*viz.*) that of *Levi* had

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the Priesthood annexed to it, together with other great Immunities, Honours and Priviledges, and in the division of the Land of *Canaan* (if Mr. *Seldens* Authority may sway any, *Rev. Hist. Tithes*, c. 2.) they of *Levi* had near three times the Annual Revenue of the largest among them, they had their Places and Voices in their *Sanhedrins* and Councils: yea and Cognizance of *Capital Causes* also, as we may find largely proved by the Learned *Spelman* in his History of Sacriledge; What sense the very Heathens themselves had of the Honours of their Priesthood, it would be very tedious to relate. The Priesthood was not esteemed any shame to him that bore the Scepter and wore the Crown. In *Egypt* as Sr. *John Marsham* in his *Cronic. Canon*, well observes these Ancient Kings after the Flood *Thoth*, or *Mercurius*, *Tosorthrus*, or *Æsculapius*, *Suphis* the Builder of the greatest of the Pyramids were Kings and Divines too. See him at large, *c. ad Sec.* 4. *rei Nomin.* Nay in the first Ages of the World, the Legislative and Executive Power went along with the Priesthood, *Melchizedeck*, *Abraham*, and *Jacob* after the Flood, as well as the *Antediluvian* Patriarchs were as well Executors as makers of Laws. Let us peruse the Holy Records, and we find *David* a King and a Prophet, his Son *Solomon* the wisest of mortal men, stileing himself by the name of the *Preacher* and valuing himself more upon that name, then upon the score of his other Royal Titles; and in the fullness of time Jesus Christ himself the *King of Kings*, the Eternal Son of God and *Original of all Power* thought it not below him telling us expresly *Luke* 4. 18. That he was sent into the World on no other end than to *Preach the Gospel*. True it is, his Kingdom was not of this World, and he never went about to dispossess either the *Roman* or *Jewish* Governours in *Judæa*; neither did his Disciples ever go about to do any thing like it; yet when the Empire became Christians, the Prudent Piety of the first and most Christian Emperors for the better Encouragement of Religion and Learning, conferred large Immunities and Exemptions upon Church-men, freeing them from Subsidies, Impositions, and sundry services wherewith other of their Subjects were burdened * *Eusebius* and *Zozomen*, record several Priviledges granted by *Constantine*, That those who Minister in Holy Religion be wholly free and exempt from all publick Burthens: And some have very well observed, that during the continuance of the gift of Tongues, extraordinary Learning, and other Miraculous effusions of Gods Holy Spirit upon the Primitive Church, there were no need of the Piety and Charity which subsequent Christian Emperors bestowed upon the Church, the Apostles had no need to study for their Preaching, and therefore had leisure enough to fish and make Tents for a livelihood, whereas ours are forced to pore upon Books, to Meditate, Write, and all hardly sufficient to search out the deep Mysteries which cost Them no Pains, the Spirit supplying the place of all. Therefore to make amends for all these extraordinary qualifications, and abundant measure of Spiritual Graces wherewith they were furnished above us, it hath pleased the Lord of the Harvest in these latter days to raise up Christian Magistrates to assist and encourage his Labourers, and appoint them a more setled and plentifull allowance; yea and honour also, and power together with it, for that Wisdom without these is commonly contemned. Who ever was chosen a Magistrate in our Neighbour State of *Holland*, or here at home? who had not Riches, and therefore Honour to support them, Wisdom in the esteem of the Vulgar is always thought to be accompanied with Riches and Power: So that the pretences of those men who for a Cloak to their Innovations and Sacriledges, vainly vaunt that all things should

Ad. Sec. 1.

Euseb. Ecc. Hist. 10. *c.* 7. *Zom. l.* 1. *c.* 9.

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be brought back to the Primitive Purity, and the Clergy alſo to the Apoſtles Poverty, ſeem to argue thus much that they are no farther true Goſpel Miniſters, and the Succeſſors of the Apoſtles than they are able to work Miracles, and that they though not enabled to it by any Education may be required to work in any of thoſe Callings of which the Apoſtles were, whoſe Succeſſors they pretend to be. We read in *Lud. Vives* in his Commentary upon St. *Auſt. de Civitate Dei*, That the Prieſts of *Ceres* [no other than the Mendicants amongſt them of *Rome*] were to renounce the World and Riches and Honour too; and therefore that on the day of their Initiation they were to put on a Coat which they never left off till ſuch time as it was ſo ragged that it would no longer hang to their backs; certainly if Spiritual Perſons were left to ſome mens allowance, this would be their Portion from them to be clad with Poverty, Contempt, and Rags, and their Callings as well as their Neceſſities would conſtrain them to *Faſt and Pray*. I know ſome men (particularly *Luther*) amongſt our Reformers have ſleighted Honours, and that Portion due to their Callings, out of ſincere Principles and a good meaning, who have yet lived to Repent their Error, though not able to redreſs it, when they have ſeen how much the Church has thereby ſuffered, and Religion been damnified, Witneſs *Luther Epiſt.* p. 131. *Ego per meo ſtipendio annuo tantum novem antiquas Sexagenas habeo, præter has ne obolus quidem mihi, aut fratribus e Civitate accedit.* A great and noble reward for ſuch matchleſs deſerts, and if ſo happy an Inſtrument of *Europes* Reformation, ſo valiant a Champion, who ſingly oppoſed the United Power of *Rome* and Hell, What may the Clergy of our days expect? *viz.* To be deveſted of their Revenues, Honours and Immunities, becauſe they are the Succeſſors of their Forefathers the Biſhops and Reformers in Queen *Marys* days, ſome of the Principal whereof were publickly Burnt as Martyrs for that Religion which (God be thanked) maugre the Monſtrous ingratitude of ſome, we yet through the Bleſſing of God enjoy, by the Pains and Labours of their Worthy Succeſſors. Who are the Perſons who have to the Eternal Shame and Infamy of *Rome* laid open the Vileneſs, Wickedneſs, and Immorality as well as the falſe Doctrines, Idolatries and Superſtitions of that Church? Who are they who have been the Watchmen upon the Wall, that have ever ſince the Reformation Beaten and Foiled them in their Aſſaults upon our Church? Was not the Walls thereof Watered, and as it were Cemented with the Blood of *Cranmer*, *Latimer*, *Ridley*, *Hooper*, and others; the Superſtructure raiſed by *Jewel*, *Reynolds* and others, *Sed me reprimo*. And yet now thoſe days through Mercy are over, Muſt their Succeſſors ſtill be wounded by the hands of their pretended Friends, and receive ſuch hard meaſure from their Pretended Well-wiſhers? *This ſtrikes to the very Heart.*

Scilicet,

Hoc Ithacus velit & magno Mercentur Atridæ.

CHAP.

CHAP. II.

The Clergy under the Law and Gospel also, have ingaged in Secular Causes, and the State very happy in this their Administration in the Primitive times of the Gospel proved from the Examples of St. Ambrose, *St.* Austine, &c.

WE all know it was a Political Maxim mentioned by *Josephus* as derived from *Moses*, πρασσέτω μηδὲν ὁ βασιλεὺς δίχα τοῦ ἀρχιερέως καὶ τῶν τῶν γερουσιαστῶν γνώμης. *Philo. in vit. Mos.* The King must ever take the advice of the Priest, *Moses* himself was a Priest as well as a Ruler; and he appointed Priests dureing the *Levitical* Administration to be Overseers of all things, Judges of Controversies, and Punishment of Malefactors, *Joseph. lib.* 2. *cont. App.* who saw the precept reduced to practice, tells us the thing in fact was so. Who hath not heard that *Ely* and *Samuel* the Lords Priests were at the same time Civil Judges in *Israel*. *Chytræus* makes three Consistories amongst the *Jews*, of all which the Priests were the Principal and Essential Members: (1.) A Triumvirat in every City wherein many matters and lighter Trespasses was decided; these *Grotius* calls *Pedaneos Judices*. (2) The little *Sanhedrim* Consisting of 23, wherein Capital Causes were determined in the Gate of every City. (3.) The Council of State or grand Senate of 70 Elders, which some make to consist of 71, taking in *Moses*; others in 72. Six out of each Tribe, the High Priest being commonly of the Number. Now that the Priests and *Levites* were part of this great *Sanhedrim*, *Causabon* will bear me out; who makes it appear out of their best Authors, *quod hujus Concilii ea fuit institutio ut si fieri possit e Solis Levitis & Sacerdotibus constaret*, That as near as might be, the endeavour was it might consist only of Priests and *Levites*; whence *Josephus* and *Philo* oftentimes under the Title of Priests understand the *Sanhedrim*. Come we down to *David* whose Government was a Pattern to all his Successors, his Reign was peaceable and flowrishing; nor did he want States-men of the most raised abilities for his employments: Yet did not this Wise, this Holy Prince think it inconsistent with the Sacred Function (which yet St. *Austin* tells us in some respects *Operosius Ministerium* than that of the Gospel) to engage *Levites* in his weightiest secular Charges. For we find *Hathaliah* and his Brethren appointed Officers on this side *Jordan*, not only in the business of the Lord, but *in the Service of the King*: And *Jerijah* another in Holy Orders is made Plenipotentiary or Ruler over the *Reubenites*, the *Gadites*, and the half Tribe of *Manassah* in every matter pertaining to God, and in *the affairs of the King likewise*, 1 *Chron.* 26. 30, 32. Nor was he singular in it, but was Imitated by good *Jehosaphat* who made the Priests and the *Levites* Judges of all the Controversies in *Israel*, not excluding *matters of Blood*, 2 *Chron.* 19. 8, 10. Now run over the Catalogue of all the Kings of *Israel* and were any to be paralled with these? I am sure that none went beyond these, none whose Government did more prosper with Righteousness, Justice, and Tranquility. And though under the rest of the Kings we have no express mention of the same practice; yet all things considered, we have more reason to conclude it held than the contrary, for we find *Jehoiada* the Priest chief Counsellour to *Joash*, 2 *King.* 11. And if we look into after times at the *Babylonian* Captivity, the Priests

Exerc. 13. *c.* 5.

Prieſts command all and poſſeſs the Scepter for ſome Hundred of years, for the *Aſſamonæan* Race continued abſolute Princes till *Pompeys* Conqueſt, *Joſeph. l.* 13. *c.* 9. We may further add that many Civil Cauſes are by name reſerv'd to the *Levical* Cognizance, as the Inquiſition for Murther, falſe Witneſs, *&c. Deut.* 21. And yet after all, the Preachers of the Goſpel do not hence draw arguments that they are chiefly and ſolely to be intruſted with theſe great and Important Miniſteries, but I do on their behalf averr, and will be ready to prove and maintain, That a fit allowance being made to the difference of Times and Perſons; the model preſcribed by God himſelf under this *Levitical* Adminiſtration may ſafely be followed now in ſome things, and thoſe no Circumſtantials alſo.

But leaving *Moſes*, let us come to Chriſt, and ſee how matters ſtood under the Goſpel, here though we have no inſtances of Honours conferr'd by our Saviour upon his Apoſtles, yet have we Propheſies, that after the publication thereof Kings ſhould become the Nurſing Fathers of it, and that the feet of thoſe that brought the glad tydings of Peace ſhould be Beautiful upon the Mountains, which Mr. *Calvin* applyeth the Bounty and Munificence of Princes to the Church, *Iſa.* 49. But for the firſt 300 years, What could rationally be expected from the profeſſed Enemies of Chriſtianity? no other honours than cruel Perſecutions whilſt the perſecuting fury laſted, whilſt they were burnt *in uſum nocturni luminis*, Tacit. as the Hiſtorian hath it. The ordinary ſentence was,

Tœda lucebis in illa
Qua ſtantes ardent & fixo gutture fumant, Juven.

But no ſooner was *Gentiliſm* aboliſh'd, but we have a new and ſmiling face of Affairs under the happy Reign of *Conſtantine* the Churches great Patron, as well as the Clergies Friend. And henceforth the Primitive Piety was not wanting, who thought no Honours or Powers miſplaced upon their Spiritual Fathers, for whom they judged nothing too dear. All Hiſtories ring of *Conſtantines* kindneſs to his Clergy, by whom the moſt weighty Affairs of his Empire dureing his time was moſt happily tranſacted, and that moſt of his Succeſſors wrote after his Copy will appear by what follows; for it were very eaſie to muſter a little Army of Fathers engaged in Secular Employments. We read *Zozomen l.* 6. *c.* 32. that *Epiphanius* Biſhop of *Cyprus*, a Perſon of ſingular vertue, prudence, and piety, πολιτικοῖς ἐμβαλὼν πράγμασι, a man buſied in Political matters, *Theodoret* reports *l.* 2. *c.* 30. that one *Jacobus* Biſhop of *Niſibis* or the *Mygdonian Antioch* was ἐπίσκοπος πολεῶς καὶ στρατηγὸς, Biſhop, Governour, and Captain of the ſame City. In *Baronius*, A. 610. I find that *John Patriarch* of *Alexandria* was accuſtomed to ſit twice a Week and Judge between thoſe that were at variance, and to reconcile them, and once when none came to him, he departed weeping, That all that day he had done no good, but *Sophronius* replyed, That he had more cauſe of rejoycing than of Weeping; for having brought the City to ſuch good Order, and to ſo great Peace, that they were more like Angels than men, having no differences left, but were all in friendſhip and amity. *A rare Example to the Immortal Fame of an Excleſiaſtical Judge.* We all remember that Sir *Thomas Moore* commanded it to be ſcored up as a wonder, That he had once been able to clear the *High Court of Chancery from Suites, and not one cauſe to remain unheard*: But here we have a Populous City (hardly ſhort of any in our Nation) by the pains of a good Biſhop, *without any charge to the Litigants*, reduced to a perfect unity within it ſelf.

But we will paſs over ſuch obſcure Names, whom it were endleſs to reckon up and Select only a few, whoſe eminent Labours have Eternized them to poſterity, and begin with St. *Ambroſe*, who flouriſhed *A. C.* 378. and to his Conduct and Government was the great City of *Milan* entruſted, ſo that St. *Auſtin. Conf. l.* 6. *c.* 7. Complains that he was a long time kept from acceſs to him *Secludentibus me ab ejus aure atque ore Catervis negotiorum hominum quorum infirmitatibus ſerviebat*; He had whole troops of Suiters about him to diſpatch their worldly buſineſs. The next ſhall be that great *Affrican* Light St. *Auſtin*, who *Ep.* 147. hath this paſſage, *Homines quidem ſuas ſæculares cauſas apud nos finire capientes, dum iis neceſſarii fuerimus, ſit nos Sanctos & Dei Servos appellant, ut negotia terra ſuæ peragant aliquando agamus negotia & ſalutis eorum non de auro, non de argento non de fundis & pecoribus pro quibus rebus quotide ſubmiſſo capite ſalutamur ut diſſentiones hominum terminemus.* He ſaith he was every day ſollicited to make up ſome breaches about Gold, Silver, Land, Cattel, *&c.* And yet where have we found a more Faithfull and Aſſiduous Preacher and Paſtor than this good father? Were any more engaged in conteſts with Hereticks, or any that left a larger Legacy of his Learned Labours to the Church? I dare challenge any before or ſince the Churches Reformation, who have done the like, and who will ſay that the good Father had miſpent his time, that had better been laid out in *painfull Preaching* to his flock? Whereas we all know that Preaching is but a very ſmall part of the Miniſters Calling, yet of late times it hath been made by ſome to ſwallow up the reſt of the Miniſters Duties as neceſſary and Eſſential to his Callings as that can be; and have obſerved alſo, that ſome Miniſters themſelves, otherwiſe good men, have been a wanting to themſelves and the Church, in complying too much with a ſort of men amongſt us, whoſe intereſt it is to draw all Cauſes into their own Courts for the ſupport of their own Grandeur and Faculty; whereas otherwiſe thoſe Suites and Cauſes might perhaps with little or no charge have been more ſpeedily, yea and ſatisfactorily determined. Our laſt inſtance ſhall be in *Gregory* the Great, *de Cur. Paſt.* (with who ſome cloſe the good Popes) whom we find complaining that *Sub colore Epiſcopatus ad ſeculum retractus ſum in quo tantis terræ curis inſerrio quantis me in vita laica nequaquam deſeruiſſe reminiſcor.* He was never in all his Life time ſo encumbred with Worldly buſineſs, as after he came to be a Biſhop; but he afterwards adds that, *Etſi cogamur terrenis negotiis intendere, mens tamen noſtra ſæculari varietate non delectatur, ſed tota in unum currit, atque confluit finem.* Though he was forced to do this for the good of his People, yet he took no Pleaſure in it, and his mind was taken up with better things, for all agree that theſe muſt not be undertaken out of love to them, but Chriſtian Charity and Compaſſion to the oppreſſed, *Aug. de Civ. Dei l.* 19. *c.* 19. Now theſe Imployments were conferred upon thoſe Fathers not as Biſhops but as Subjects more Eminently qualified than others, both by their Prudence, Experience, and Integrity, as well as Humane Learning. But Three there are (in which they did Principally engage) and which may ſeem moſt agreeable to their Coat: Firſt, *To be in the Commiſſion of Peace*; and to ſpeak Impartially, Who fitter for ſuch a Work than they, whoſe buſineſs and Calling it is to reconcile thoſe that are at variance: And this was the deſign of the Ancients, though at firſt it began in a way of Charity; yet being found profitable, it was upon mature Deliberation by the Chriſtian Emperors confirmed, particularly by *Conſtantine*, *Zozom. lib.* 1. *c.* 9. who leaves it free to any, τῶν ἐπισκόπων ἐπικαλεῖσθαι κρίσιν ἐὰν βούλονται τοὺς πολιτικοὺς ἄρκονως παραιτεῖσθαι. *Valens* and *Valentinian* enlarged it and intruſted them with the Rates of Commodities Sold in the Market,

ket, *Cod. l. 1. de Aud. Ep. tit. 7.* Their Juriſdiction I confeſs hath been in ſeveral ages various, ſometimes more ſometimes leſs as the Emperors were more or leſs favourable to the Church, whoever kept the Soveraignty in their own hands, *Conſtantine* was the firſt that paſſed the Royal Grant in favour of the Clergy, permitting the Cognizance of all Civil matters, even between Laymen to the Epiſcopal Tribunal if either party did require it, though the other denyed his conſent, and their appeal was to be obeyed by the Magiſtrates whenever made, though the action was already commenced in another Court. *Arcadius* and *Honorius* did a little retrench this unlimitted power, yet ſtill allowing it by the joint conſent of both parties, and making the Biſhops as it were Referees, *l. ſi quis ex conſenſu. de Aud. Epiſcop.* and their deciſion to be binding and final without appeal. This Law was after ratified by *Theodoſius* and *Juſtinian l. Epiſc. c. eod.* Nay this latter Emperor *Juſtinian* repoſed ſo much confidence in them, that he made them Overſeers of the Secular Judges, *Novel. Conſt.* 56. This then has been the practiſe of that pure and Primitive Age, and the greateſt Enemies the Church had, could never deny but that the Biſhops have had their Tribunals for above theſe 1300 years Erected by *Conſtantine*, confirmed by *Arcadius* and *Honorius*, *Theodoſius* and *Valentinian*, &c. Only ſome Curiouſly mince the matter, and allow them power to hear Cauſes, and to become Referees and Umpires by the conſent of both Parties, but yet they will not hear talk of any Coercive Juriſdiction, though as eminent Civil Lawyers as any are, Attribute it to them, and particularly *Accurſius* interprets *Audientia Epiſcopalis*, a term frequent in the Code by *Juriſdictio*; and *Conſtantine* forbad expreſly the greateſt Prince in the Empire to revoke what once the Biſhops had Decreed, *Euſeb, Vit. Conſt. l. 4. c. 27.* In proceſs of time the Magiſtrates having encroached upon, and almoſt outed the Clergy, *Charlemaine* revives that good old Law of *Conſtantine*, confirming the ſame Juriſdiction to all Biſhops, repeating the Charter word for word, *Car. Mag. in Capit. l. 6. c. 28.* What the practiſe was in our own Country of *England* ſhall God willing be made out in what follows, wherein I doubt not but to give abundant ſatisfaction of the *Factum* that the Clergy were employed as much as the Laity in the Deciſion of Secular Cauſes, ſo far as we have good Authority and Record in the times of the *Saxons*, and ſo downwards till our late and unhappy Diviſions 1640, &c. which God grant may be ever buryed in Oblivion, and that we may never live to ſee the ſame again. Secondly, To be of the Privy Council, where frequently Caſes of Conſciences relating to State-matters may ariſe: As ſuppoſe there be a Conſultation about a War or Marriage, the Lawfulneſs or Unlawfulneſs thereof, muſt be judged *in foro Conſcientiæ*, and ſo is the proper Subject of a Divine or Clergyman; and perhaps the thing will not bear ſo much *delay*, as to Summons Prelates together for Advice nor Reaſon of State to be ſo much publiſhed, for want of ſuch Knowing and Religious Counſellours, Princes may often be entangled in unjuſt Maſſacres, and raſh Wars, and Innocent Blood be ſpilt, which otherwiſe might have been prevented: And for prevention whereof the Godly Prudent Princes both of our own and other Nations have ever admitted ſome ſpiritual Perſons to their Counſel Tables, and Cloſet Debates. To the good advice of Biſhop *Fox* of *Wincheſter* we owe the Union of the two Kingdoms of *England* and *Scotland*; for the other Privy Counſellors adviſing King *Henry* the 7th to Marry the Eldeſt of his Daughters to *France*, the more Noble and Rich Kingdom: the old and wiſe Biſhop adviſeth his Majeſty the contrary, at which the King ſeeming ſomewhat ſurpriz'd, the Biſhop gave him

this

this as the reaſon of his Opinion, that by Marrying the Elder to *Scotland*, that Kingdom would be brought to *England*, and old Enmities reconciled and for ever buryed: Whereas on the contrary *England* being under *France*, we ſhould have here been ruled by a *French* Lieutenant or Deputy, which the *Engliſh* he doubted would hardly brook, and perhaps our Government and Laws by reaſon of their unagreeableneſs to the *French*, might have been attempted to have been changed into thoſe of *France*, which the *Engliſh* man (his Opinion was) would hardly bear: Whereas thoſe of *Scotland* were not ſo much differing from the Laws and Cuſtomes of *England*, and twas to be hoped the two Nations would better accord together than the *Engliſh* and *French* would. The good event of which Counſel we have ſeen with our own Eyes, and may it long continue. It is recorded of *Conſtantine* that he would not in any wiſe diſpenſe with the abſence of his Biſhops from him, who had he lived in our Prophane age, the Churches Enemies would have ſaid that the good Emperour had been Prieſt-ridden, a well-meaning man but not overwiſe: But the good Emperors joy it was to ſee *His Court to be as it were a Church.* Nay ſo much uſe of theſe Holy men he made, that he made them follow him in his journeys and warlike Expeditions, *Euſeb. de vit. ejus l.* 1. *c.* 35. *Idem l.* 4. *c.* 56. So that we read in *Peter Bleſenſis Ep.* 84. *ad Alex.* 3. how he proves at large there, That it is not only lawfull but very expedient for Prelates to be in the Courts and Counſels of Princes upon ſuch like important reaſons as thoſe are, and therein excuſes the Biſhops of *Wincheſter*, *Ely*, and *Norwich*.

Thirdly, To be employed in Treaties and Negotiations of Peace and Commerce, and this both the Ancient and Modern practiſe will juſtifie, that none have been more frequently or more ſucceſsfully uſed and employed in ſuch Meſſages than the Ambaſſadours of Chriſt: Solemn Embaſſies cannot be expected before the Magiſtrate embraced the Goſpel. But in the very beginning of the 4th Century we have *Maruthas* Biſhop of *Moſopotamia* ſent Embaſſador from the Emperor of *Rome* to the King of *Perſia*, *Socrat. l.* 7. *c.* 8. Preſently after *Theodorick* diſpatcht *Epiphanius* Biſhop of *Ticinum* or *Pavia* to *Gunebald* King of the *Burgundians*, *Eunoch. Tiſin. vit. Epiphan.* who at his requeſt releaſed great numbers of poor Chriſtian Captives. Then we have St. *Ambroſe* ſent by *Valentinian* to *Maximus* that commanded the *Britiſh* Armys, to deſire Peace, which he happily effected to the great contentment of his Maſter, *Ambroſ. Ep.* 27. *l.* 5. where he mentions an other Embaſſy wherein he was imployed. I might add St. *Chryſoſtome* imployed to treat with *Gainas* as *Baronius* informs us. *John* Biſhop of *Rome* commiſſioned by *Theodorick* to *Juſtine* the Emperor, *Niſeph.* with multitudes of others in latter times, whereof if I ſhould give inſtance ſome perhaps would reply upon me that thoſe were times of Popery and Ignorance; yet perhaps of more candid ſimplicity and honeſty than the times wherein we live; and for the Moderns the time would fail me to ſpeak of our own and Neighbour Nations; for this continued the Univerſal practiſe of Chriſtendome *till Sincerity gave place to Hypocriſie*, and that new Definition of an Embaſſadour came up, that he was, *Vir peregre miſſus ad ſpetioſe mentiendum Reipub. cauſa.* A good man ſent abroad to tell ſpecious lies for his Countries ſervice. *Then indeed it was high time for theſe Holy men to reſign up theſe Employments to others whoſe Education and courſe of Life better became them.*

Thus we have ſeen both Ancient and Modern Uſage on the Clergys ſide, the uninterrupted practiſe of the World for above 5000 years before and under the

Law

Law in the pureſt times ſince the Goſpel all ſorts of men both Pagan, *Jewiſh* and Chriſtian, allowing it in their practiſe, and none ever queſtioning it, ſave ſome late, and thoſe few Innovators, who though they have diſclaimed the infallibility of the Church of *Rome*, ſeem to ſtick a little to cloſe to that of *Geneva* or *Scotland*, we have heard the moſt eminent amongſt the Fathers engaged by their Princes in Secular Employments, and if yet ſtill this muſt be an Error, *ſit Anima mea cum patribus*, I dare caſt my Lot on that ſide. 'Tis confeſt 'tis pitty that any ſhould be miſled by Authority, but 'tis moſt miſerable not to be moved by Authority.

This then being the *Factum* or uſance as is Evident, let us a little in the next place examine the *Jus* of it, and for any Fanatick to except againſt it, is a ſelf-contradiction, ſince their avowed Principles and dayly Practiſe allow their Teachers to follow any other Calling, either of Camp, Country or City without control. But it is the rigid Diſciplinarian who takes the moſt Offence at it, and therefore to him we ſhall addreſs our ſelves, and for once ſuppoſe him to be of the little Commonwealth of *Geneva*, and to have the beſt parts, and to be Maſter of the beſt head-piece amongſt them. If the Senate or Syndic ſhould commiſſion him to decide a difference between his quarrelling Neighbours, or ſend to him to adviſe with him about a War with their great Enemy the Duke of *Savoy*, or engage him to Solicite at the Court of *France*, or at the *Suiſſe Cantons* as a Publick Agent, there being none more likely to prevail in ſuch an Embaſie than himſelf; and the little Commonwealth otherwiſe would be in danger to be loſt. In this caſe ſhould he be heard pleading the inconſiſtency of his Holy Profeſſion with ſuch an imployment, and thereupon return a denyal; if ſo, then the Magiſtrate will be an ill condition, who muſt be obeyed in nothing more than the others Calling enjoins him whether commanded or no, and his being a ſpiritual Perſon will make the Civil Magiſtrate looſe the ſervice and uſe of his Subject: A thing yet which the moſt eminent amongſt them have not declined; for that neither Mr. *Calvin* formerly in the one, nor Mr. *Henderſon* of later times in the other, have not ſcrupled greater matters.

But let matters be made never ſo clear, it may be feared that the Vulgar have taken up ſuch prejudices from the inexcuſeable buſineſs of ſome late Preachers here amongſt us intereſting their very Pulpits in State matters dureing our late Troubles (a practiſe never ſufficiently to be condemn'd) that all perhaps may be bound to their good Behaviour for a while for the Miſcarriages of theſe men, who have been ſo notoriouſly guilty of the ſuppoſed crime, they have been guilty of in their Preaching againſt it, and chargeing it upon other men, who never (as they did) engaged in any thing of that nature, but when they were commanded to it by the Magiſtrate: Though 'tis hoped that all learned and judicious Perſons will be more conſiderate, and diſtinguiſh between the frantick madneſs of a few giddy Pates, and the ſober actings of Eminent Prelates commiſſion'd by lawfull Authority, and not take an advantage from the miſcarriages of this other ſort of men to bring an irreparable injury on Poſterity by debarring others more ſober than they. It is a true ſaying and confirmed by the experience of many hundred of years. *Laici ſunt ſemper inimici Clero.* When the World was *Pagan*, the Devil taught the multitude to cry out if any publick Calamity hapens, that the Chriſtians were in the fault, and they muſt to the Lyons: but now the cunning Sophiſter hath changed his note, and if any thing be amiſs either in Church or State, preſently the blame muſt be caſt upon the Clergy; They muſt be Sa-

crificed to appeaſe the many-headed Multitude, their Lands Sequeſtred or Sold, and all places of Honour and Truſt interdicted them; certain we are, the qualifications of a Biſhops Calling do not in the leaſt incapacitate him ſuch employments as we have been ſpeaking of: For (1.) 'tis required that he be *Vitæ Probatiſſimæ*, of an upright unblameable Converſation. (2.) *Nullius Criminis reus.* (3.) *Ætate gravis*, well ſtricken in years. (4.) *Doctrina præſtans*, excelling in Learning, with many other of the like nature. Now if theſe are not kept, they have the more to anſwer for whom it concerns, if they be obſerved, will not any one who reads this, conclude no Perſons more fit than they for the moſt weighty Affairs? For all Polititians make Integrity, Prudence, and Learning the Principal ingredients of an accompliſht Magiſtrate; ſo that if Aptitude be reſpected, we may ſafely affirm there are none better qualified for Counſel than the Clergy, whoſe Education and Inſtitution hath enabled them to look into all the Idæas and Models of Government; to ſearch the Depths and Myſteries of Empires, moſt of which are lockt up in ſtrange Languages, and 'tis not every capacity that can gain the Key. Then for true Politicks (the late *Florentine*'s Reaches let other men learn and admire) there's as much to be found in the Hiſtorical part of the Scripture, as in any Books in the World, ſo that Divines may in all probability make good Statiſts. And is it not pitty then that their Countrys ſhould be deprived of ſuch hopefull and eminent abilities? doubtleſs thoſe of the contrary Opinion do not throughly weigh the conſequences of their Aſſertion, clearly leading to disjoin the Church from being a part of the Commonwealth, which for 1300 years and better have been happily united; if the Biſhops and other Spiritual Perſons who yet by their Revenue are ſo conſiderable in the Commonwealth, muſt no longer be lookt upon as Citizens, or parts of it, and *eo ipſo* be debarred from Employments, but incontinently forfeit all their Priviledges as ſuch, the conſequence I preſume would not be very good.

CHAP. III.

Some Authorities from Scriptures, and the Canons of the Antient Church ſeemingly contradicting the former poſition explained.

AND yet for all this we confeſs we find many good men are ſtrongly perſwaded that Eccleſiaſticks ought wholly to be excluded from Civil matters: An Opinion indeed much pretending to Humility and ſelf-denyal, and receiving ſome countenance and colour from Scriptures, the practiſe of three firſt Centuries, and ſome Canons of Counſel which muſt be the Subject of our next conſideration.

The Text that is moſt inſiſted upon is, 2 *Tim.* 2. 4. which being miſtranſlated by the Vulgar Latine *Militans Deo* begat greater prejudice in the minds of many.

Firſt, Then we may take notice that the Sentence is general, and belongs to every calling and ſort of men, though in a more peculiar manner 'tis referred to the Preachers of the Goſpel, yet none can plead exemption, but others are willing to ſlip their necks out of the Collar,, and the Clergy only muſt be tied to it, whom for

for the preſent we will grant to be principally concern'd. The ſtreſs of all lies upon the words πραγματείαις βιωτικαῖς which *Theophylact* expounds by θορύβοις καὶ ταραχαῖς the tumults and confuſions of this Life, *Corn. a Lapide* ſaies πραγματεῖαι βιωτικαὶ are ſuch employments as concern food and rayment, and inſtances in theſe *agricultura, mercatura & artes mechanicæ*. Now who does not readily approve of this, and judge it very improper that a Preacher ſhould be a Merchant, a Plowman or a Mechanick, do not both Common and Cannon Laws forbid the ſame? *Eſtius* has much to the like purpoſe, πραγματείαις βιωτικαῖς, &c. *Quæ quis exercet ut habeat unde vivat*, and therefore quotes to this purpoſe a ſaying of *Ambroſe*, *Indecorum eſt homines curare de cibo qui militant Deo*, this then rather flies in the face of them that permit their Preachers to put on Blew Aprons, and make them ſuch ſordid allowances, that they muſt either work with their hands or ſtarve, ſeeing it is not comely that the Lords Warriours ſhould buſie themſelves about inferiour matters that tend to get a livelihood, and ſo *Valla* renders it, not *negotiis* but *negotiationibus*, when our Saviour employed Fiſhermen to Preach his Goſpel, weak inſtruments to confound the powers of this World, though he furniſhed them with ſuitable abilities that they needed not to ſtudy, yet he made them leave their nets, and not uſe them as their ordinary Profeſſion. But laſtly, and moſt ſatisfactorily, the Apoſtle here makes a compariſon between Prophane and Spiritual Warfare, and therefore the better to underſtand the genuine ſenſe we muſt conſider what Military Diſcipline did require, *Veg. l.* 2. ſays that by the Laws of War he muſt not have any private affairs committed to him, nor mind his own gain. Hence we read in *Florus* of the *Romans* ſeverely proceeding againſt *Poſthumius* for imploying his Soldiers to till the ground, *Vid. Leg. Arcad. & Honorii Tit. Miles.* And *Leo* the Emperor ſays expreſly, thoſe that are armed and maintained by the Commonwealth muſt only mind publick affairs, and not till the ground, keep Cattel, or Traffick, *L. Mil. C. de re Militari l.* 12. All avocations were inhibited, and ſuch matters as tended only to the publick good enjoyned them, and why then ſhould not the ſame Analogy hold here, and ſuch affairs be permitted to the Clergy, as tend to the good of the Church, and the Glory of their great Commander.

Next we are urged by the Apoſtles practice who were ſo tender of any interruption that they denied to attend upon tables, and make proviſion for the Poor. 'Tis true, in the infancy of the Church, when the Goſpel was to be publiſhed all the World over, the Work great, and the Labourers exceeding few, the leaſt diverſion at ſuch a time would prove a conſiderable hindrance and deſtraction to them. But now when the Lord of the Harveſt has encreaſt the number, and plentifully furniſhed his peaceable ſettled Church, every Village being now ſupplied, and if the complaints of ſome be true, the Nation ſo overſtock'd, that there's hardly employment, much leſs maintenance for the Multitude. In this caſe to make no difference of times, when the mercifull Providence of God hath made ſo vaſt a diſtinction ſeems little agreeable to reaſon. But if from this, occaſion muſt be taken preſently to forbid every petty interruption and diſturbance; how came St. *Paul* to contradict himſelf, and to follow his Tent making, labouring with his hands for a livelihood, which muſt needs take up a good part of his time, and hinder his Praying and Preaching. Add to this, that the ſeven Deacons appointed by the Apoſtles to ſucceed them in the care of the Collections, were according to *Epiphanius* of the number of the 70 Diſciples, and yet for the publick benefit, their conſtant Preaching was now and then diſpenced with to attend on Tables.

Thirdly,

Thirdly, They argue from the Canons of the Primitive Church, prohibiting Clergy men to judge and intermeddle in Civil Matters, or any Cauſes Secular; the Prohibitions of this ſort are many and various, they may be ſeen in *Balſamon*, *Zonarus*, *Binius*, &c. It would be an infinite task to give particular anſwers to each Canon, and therefore I ſhall lay down ſome general Rules, which may the better conduce to the underſtanding of them all, which if well applyed will make an abundant ſolution to that ſo complicated an Objection.

And here I cannot but admire the Modeſty of the Primitive Church, and the Charity of the People; the earneſtneſs of Princes in Commiſſioning of Spiritual Perſons to compoſe all emergent differences, and the forwardneſs of the oppreſſed in flying to the Tribunals for Juſtice, whereupon the Holy Fathers in proceſs of time to take off their Clergy from thoſe Affairs made ſundry and ſevere Canons in divers Counſels, and therefore (1.) 'Tis clear, the great deſign was to forbid ambitious ſeeking after, and voluntary engageing in Secular matters for Sordid ends, and out of Covetous Principles, and this may probably be collected, becauſe we find a diſpenſation given when impoſed by the ſupreme Magiſtrate. In the Counſel of *Sardis* tis granted upon the motion of *Oſius*, *Si religioſi imperatoris literis vel invitati vel vocati fuerint*, and undertaken in obedience as cauſes of Piety and Charity, overſeeing Widdows and Orphans, provided it extended not to the notorious neglect of their Religious Callings. And thus *Juſtin Martyr* calls the Biſhop the great Steward of all the poor, *Apol.* 2. the Contributions of the Faithfull being laid down at his feet, and by him diſtributed. And *Ignatius Ep. ad Polycarp.* calls the Biſhop the great Truſtee of the Widdows. (2) 'Tis not a total prohibition, but only a prudent reſtraint, leaſt animoſities and jealouſies ſhould ariſe in the Laity, by too much encroaching upon their Courts, and therefore the wiſdom of ſundry Counſels confin'd the Clergy to ſuch matters as were properly of Eccleſiaſtical Cognizance.

But (3.) The ground and reaſon of theſe interdictions was not the unfitneſs and incapacity of ſpiritual Perſons, but out of reſpect to their eminent Callings, leaſt they ſhould be diſparaged by mean and vile employments, and expreſs mention is made of ſordid Offices about Princes and Noble men, as of Stewards, Bailiffs, &c. But when by the favour of Princes their employments were honourable, and their temporary diverſions did bring abundant recompence to the Church; we find thoſe that had the principal hand in enacting theſe Canons themſelves engageing. Now can it be ſuppoſed, if this had been the meaning, they would have been guilty of ſo great a contradiction, and no future Counſel reprove it. St. *Cyprian* much confirms me in this Opinion, *l. de Lapſis*, is perſwaded that God ſent the great Perſecution under *Decius* onely to awaken the Chriſtians, who were growing exceeding corrupt, eſpecially the Clergy; for he there complains that the Biſhops themſelves abandoned their holy Functions, and dealt in matters of the World, haunting Marts and Fairs for filthy lucre ſake. And much to ſame purpoſe we find in Writers of our own Country, as *Gildas*, *Bede*, &c. But to make peace between quarrelling Nations, to compound differences amongſt Chriſtians, and ſuch like, tending to the honour of God and the Glory of the Goſpel, which may be often practiſed without detriment to their Spiritual charges, I never find theſe expreſly forbidden, or ſuch as engaged in them, as *Cyprian*, *Auſtin*, *Chryſoſtom*, *Gregory*, *Bernard*, &c. Condemned; for St. *Paul* became all things to all men to gain a Soul: Will not the example bear his Succeſſors out, if they go to the utmoſt verge of their Chriſtian Liberty, ſtill keeping

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on this side sin, to preserve Kingdoms, the Churches Peace, and to prevent the effusion of Christian Blood, their absence some days from their private charges will be abundantly recompenced by such happy consequences.

CHAP. IV.

The Ancient Estate of the Clergy and Priests in this and other Kingdoms.

WE have before intimated that the Prudent Piety of the first Christian Emperours, for the better Encouragement of Religion and Learning did confer many and great Priviledges and exemptions upon their Clergy in those Primitive times. Come we now to manifest that the *Franchises* of our *British* Church, were neither short for number or extent, and that they are all confirmed by *Magna Charta* without restraint, the words are *we have granted* to God, and by this our present Charter confirmed and for our Heirs for ever, that the Church of *England* shall be free, and have all her whole Rights and Liberties inviolable, all the Nation being content to stand accursed, if this grant were at any time infringed. You may see in Ancient Authors the manner of its Publication (*viz.*) The King, Prelates, and Peers, *&c.* came with burning Tapers in their hands, throwing them down on the ground, and saying, so let his light be extinguished in the other World, which shall go about to break this Charter and Agreement, yea more if any thing should be done against it and contrary to it, it was *ipso facto* declared void, 26. *Edw.* 1. *c.* 2. And must *Magna Charta* be violated only when the Clergys Priviledges are invaded, Why shall it not stand firm and good for them, and on their behalfs, as for the Laity? Did not the Clergy labour as much as any for the Procurement of it? Nay were they not they who procured it from the several and respective Kings? Let us desire the Enemies of the Clergy to see their own Cronicles, and they shall receive satisfaction. Now what the Liberties of the Church were, to set them down would ask a Volume; the Lord Chief Justice *Cooke* says expresly, they had more and greater than other of the Kings Subjects, some few he recites, as that they were discharged from Purveyances, Tolls, Customs, Distresses by the Sheriff in the old inheritance of the Church, with others of the like nature. It might fetch tears from some to look back upon the Piety and Charity of our *Saxon* Ancestors who in their greatest impositions ever held their Ecclesiasticks excused, no part of that insupportable Tax of *Danegelt*, under which the Kingdom so much groaned, being ever paid by them, *Vid. Spelm. Gloss. in Danegelt.* and it may be made appear that till after the Conquest (the tenure of their Lands being at that time *Frank Almoigne*) they were ever priviledged. For King *Ethelwolf* in a full Convention of his States at *Winchester*, *Ann. Dom.* 858. Enacted that Tithes and Church Lands throughout all his Dominions should be free from Civil Burdens and Exactions, as much as Royal Tributes great and small, *Vid. Spelm. Concil. ad Annum dictum.* But dureing our late intestine Wars, How unequal were Quarterings and Contributions? What heavy Burthens did the poor Clergy bear, no redress being found to their bittrest complaints from the Lay Judges, who in some places made sport at their Miseries and Oppressions, as if nothing had been too hard or insupportable for their shoulders; now those days through Mercy are over, and must be forgotten, to receive almost in all places the same hard measure from their pretended well-

wiſhers, *This ſtrikes to the very heart.* When no regard is had of all their paſt ſufferings, First-fruits, Tenths, (no ſmall ſtanding revenue of the Crown, amounting as ſome compute to near 40000 *l. per annum*) which they joyfully diſcharge, but they muſt ſtill be left to the arbitrary diſproportionate Impoſitions of every Domineering inſolent Officer: The conſideration hereof hath convinced many (formerly of a different perſvaſion) that 'tis not only uſefull but expedient, yea neceſſary for the Church, to have ſome of his own Ordering Power to protect them, and to hear and redreſs their juſt grievances. But what further concerns the Clergys Priviledges and juſt Rights, being ſo learnedly handled by the Immortal *Spelman*, aud the general ones ſo fully Collected by *Rebuffus de Stud. Priv.* and others, I ſhall not here any further enlarge upon them. The grand concern at preſent, and which we principally deſign is, how far they were Priviledged as to publick Aſſemblies and State Conſultations. And that the Holy *Conſtantine*, and many other famous Kings and Emperours have made uſe of their advice both at Home and Abroad, employed them in Embaſſies and other important Tranſactions hath been already demonſtrated. And here in the firſt place, if ſuch an argument could hope to ſway with us Chriſtians, it would ſoon be proved that thoſe who attended the Worſhip of the Heathen gods were admitted in *Greece*, the then moſt knowing and civilized part of the World, into their *Pan-Ætolium* and *Amphyctionian* Counſels. Amongſt the *Athenian Areopagites* and *Roman* Senators, and that the Old *Gauls* divided their ſtates in *Druidas* (who had *omnium rerum immunitatem*) *Equites*, *Plebem*, as the *Egyptians* before did into Prieſts, Soldiers and Tradeſmen. But leaving *Gentiliſme* we will haſten to Chriſtendome: And here once for all, deſire our Reader to conſider, that by the fundamental Conſtitutions of the moſt and beſt ſettled Nations in *Europe*, there are three States generally ſettled whereof the Clergy is ever one: Now to make this good, though we might produce variety of inſtances, yet we ſhall content our ſelves with the ſingle Teſtimony of *Calvin* alone, knowing that it will go farther with ſome, than a Jury of others, This we find expreſly aſſerted in his Inſtitutions, *l.* 4. *c.* 20. *Sect.* 31. *In ſingulis regnis tres ſunt ordines*, &c. which how to make up without the Spiritualty will be hard and beyond my skill. In our Neighbour Nation of *France* the practiſe is notoriouſly known, the ancient ſtile of the Royal Edicts always running, as 'tis Recorded of *Pepin*, *Ann.* 744. *Per Conſilium Sacerdotum & Optimatum ordinavimus*, *Per Conſilium Sacerdotum & optimatum ordinavit Carolomanus*, *Thuanus paſſim.* It might farther be noted that ſix Prelates are here Pairee of that great and famous Kingdom, three of them being ſtiled Dukes, and three Counts, See *Seldens Titles of Honours*, and yet the whole number of the Pairee exceeds not Twelve. As likewiſe the Arch Biſhop of *Paris* hath a peculiar indulgence in being preſent in every Court of that Royal City without exception *Chappinus*. Look we into *Hungary* where *Thwroczius* informs us that by the Fundamental Conſtitutions of King *Stephen*, the Biſhops in *Concilio Regis primi adſiſtunt*. *Poland* comes behind none in its Reverence and Reſpect for their Clergy, where the Arch Biſhop of *Gnesna* is *Primas Regni & Princeps primus*, *Staniſ. Kriſtanowick in diſcrip. Polon.* whoſe juriſdiction is not limited to the Spirituality alone, but hath the chief place in the Rank of the Senators aſſigned him, and is of the greateſt Authority in all publick Conſultations: And when at any time there happens an *Interregnum* (as it frequently doth in thoſe Elective Kingdoms) it belongs to him to ſummon a Dyet to give Audience to Forreign Embaſſadours, and to appoint a time and place for the Election of a New King. Our Author farther enlargeth this to have proceeded from the Piety

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of the *Poliſh* Kings towards the Church, that the Sons of it ſhould for ever hold the higheſt places in their Conventions, with many other Priviledges which to this day they enjoy in his own words, [*and he no Clergyman neither, but a Lawyer*] *Maximo illius Regni commodo, emolumento, adjumento, addo & ornamento. Cromerus* another Hiſtorian of that Country adds, that there is ever a Royal ſtanding Council aſſigned the King, of which there is to be two Arch Biſhops, and ſeven Biſhops. And how conſiderable a number in all the *German* Dyets the Eccleſiaſticks are *Panvinius* is a Witneſs beyond exception, who reckons thirty four Biſhops that have their Votes there beſides Abbots, Priors, *&c.* who paſs for Religious Perſons, and in the *Septemvirate* we find no leſs than three Clergy-men, *Mentz* Arch Chancellour of *Germany*, *Coln* of *France*, and *Tryers* of *Italy*. I ſhall wholly out of this Collection omit *Spain* and *Italy*, as being ſuch known vaſſals to the Pope, where the Clergy Rule the Roaſt. But one word daſhes all this [with ſome] *They are Papiſts*, a doughty argument to condemn any thing though backed by never ſo ſtrong reaſons: And let us examine how matters ſtand with others, *Andreas Bureus* in his Deſcription of *Sueden*, acknowledges that the Eccleſiaſticks were heretofore the *Prime men in the Senate*, till the Covetouſneſs of *Guſtavus* the firſt deſpoiled them of their Revenues: Yet ſince the Reformation, they ſtill to this day retain their ſuffrages in all Publick Dyets of the Kingdom. And when the New Crowned King makes choice of his Counſellors, the Arch Biſhop of *Upſal* is ſtill the firſt, who is allowed a greater proportion of Attendants, when he comes to the King than any Noble man in the Nation, no fewer than Forty Horſe being permitted him; whereas the retinue of the other Noble men muſt not exceed Thirty. And in the great Aſſembly at *Lincopen*, *Ann.* 1600. we find both Biſhops and other Eccleſiaſticks. And as to *Denmark*, *Pontanus* recites Seven Biſhops as the Eccleſiaſtical Nobility, and theſe have their Votes in all Grand Meetings. *Jonas ab Elvervelt* diſtributes the States of *Holſtein* into three Orders, 1. King and Princes. 2. Prelates. 3. The Families of the Nobles. And he makes the Biſhops of *Lubeck* and *Slewick* the two *Prime* Peers in all their Dyets. In *Scotland* it is known that anciently the Biſhops and Prelates were Eſſential Members of the Parliament, and had their Seats as ours here in *England* on the Right hand of the King: And in a Parliament held at *Edenborough*, *Ann.* 1597. a Vote paſſed for reſtoring the Clergy to their Original Priviledges, as the Third Eſtate in that Kingdom; the Learned Prince King *James* Condemning that Act of Annexing their Temporalities to the Crown as Vile and Pernitious, *Baſil. Dor. l.* 2. *p.* 43. Then for *Geneva* it ſelf, who is ſo much a ſtranger to that Reformation, as to be ignorant what a ſtroke *Calvin* and others had upon the Senate or grand Counſel, which gave occaſion to that complaint of ſome, that they had expelled *One Biſhop and admitted many*. If remoter Countries be to be regarded, amongſt the *Abiſſines* the Clergy is *Paramount* in Affairs of all natures, and we read in *Damianus a Goes* of *Zaga Zaba* an *Ethiopian* Biſhop Viceroy of *Bagana* ſent Embaſſadour to the King of *Portugal*, *Dreſſ. Orat.* In *Muſcovy* their ſupreme Convention, which thoſe Inhabitants call *Zabore*, conſiſts of the great Duke, Twenty Eccleſiaſticks, and as many Nobles, the common People being wholly excluded; and when they are met together, the Patriarch and Eccleſiaſticks are always firſt Conſulted, and firſt deliver their Opinion. I ſhall conclude this Paragraph, onely reminding, that neither the *Pagans* nor *Mahometans* are ſo inhumane or irreligious, or diſcourteous to their Prieſts as to deny them this Liberty: For that *Tully* acquaints us that it was the appointment of the Gods, that the *Roman Pontifices* ſhould not only take care of their Religion, but

further

further *Summis Reipub. præesse voluerunt, Orat. pro dom. sua.* Nay at this very day the Barbarous *Turks* never exclude their *Mufti*, but allow him free entrance, and Vote into all their Divans and Counsels; yea the great *Sultan* himself so Honours the *Mufti*, that as often as he comes into his Presence, he rises from his Seat, and according to *their mode*, putting his hand to his breast, bows his head in token of reverence and Honour, which he shews not to any other Subject, and will hardly vouchsafe the like honours to the mightiest Monarch upon Earth.

CHAP. V.

Englands *more particular Respect and Kindness to the Clergy.*

I Might here be very large should I but give the World a brief account of the Honour which our *Saxon* Kings had for their Clergy, neither was this a matter onely precarious, and by the *Courtesie* (as we say) of *England*, *Sed ipsis confirmatum legibus*, *Spelm. Concil. Ep. ad Regem.* The Person who Ministred at the Altar was esteemed equal in all things *in censu pariter Capitis*, to the Lord of the Mannour or any Knight, *Leg. Æthel. c. ult. de Wirgildis.* The Abbot was esteemed no less than a greater *Thane* which now we call a Baron of the Kingdom. The Bishop of no inferiour Rank than the Count or Earl, *Qui integro fruebantur comitatu.* The Arch Bishop equal to any Duke, who might happen to be set over, and have the Rule of many Countries; for that saith the Learned *Spelman*, in these times our Kings gave always the greatest respect and honour to their Clergy; for that in their keeping were the Keys of Learning and Knowledge, the Seculars in the mean time addicting themselves most what to the Wars, so that in those times it came to pass that the Priests mouth was the Oracle of our Common People no less than of the King and Commonwealth; for that they had ever the first Place in our Commitia's and Assemblies, no less than in the Kings Courts of Justice, and Law Tribunals in the Kings Palace with the Nobles of his Kingdom in the Counties with the Comittees and Justices of the Counties, in the Sheriffs Courts [*turno Vicecomitis*] together with the Sheriffs, the Bishops had their Adsessors, yea in the Hundred Courts, they or their Ministers sate together, with the Lord of the *Hundred*: for that one sword was ever helpfull to the other in the Administration of Justice, and nothing of moment was done in these Courts of Judgment, but by their advice and assistance, *Spelm. l. prius citat.* The practice of the Kingdom ran parallel with the Law; for in all Antient Charters and Laws which heretofore were passed and made by signing their names *cum signo crucis*, the Spiritual Lords ever preceeded the Temporal. In a donation of *Ethelbert*, *A.D.* 605. to the Monastery of St. *Peter* in *Canterbury*, the first witness subscribing it, is *Austin* the Bishop, and after him several Dukes and Earls, *Monast. Angl. & Spelm. Conc. passim.* In a Charter of King *Ina*, *Ann. Dom.* 725. To the Monastery of *Glassenbury*, after the Bishops, *Boorthwald* and *Fordred*, occur *Waldbere*, *Ethelherd*, *Ummin* and *Winchelin*, the greatest Peers in the Nation putting their Names. Not long after in a Grant of King *Offus* to the Abby of *Worcester*, *Ann. Dom.* 708. *Brotdran*, *Berthand*, *Eadbald*, and *Eadbald*, two Princes, and two Dukes, follows the Bishops. And at the same Kings Consecration at St. *Albans*, *Ann.* 793. No less than 10 Dukes, besides

other

other Nobles give place to the Prelates. And to make an end, in a Charter of King *Edward* the Confessor to the Monastery of *Winchester*; immediately after the King subscribed *Plegmund* and *Fritheſtan* the Bishops, being followed by *Ethelward* the Kings Brother, *Æthelſtan*, *Ælfweard* the Kings two Sons, *Oredluf*, *Orced*, *Brorhtulf* and *Heerferth* Dukes, many more of this nature might be produced out of the same Authors, and others, as standing monuments of the Clergies Reputation, and the Reverence our Religious Ancestors bare to their Functions, particularly the third Charter of King *Edward* the Confessor of the Foundation of the Abby of *Westminster*, where more particularly we find *Osberne* and *Peter* two of the said Kings Chaplains, signing the Charter before several of the Earls. And furthermore, here is Statute Law in the Case that this usage may not be thought to proceed meerly from the Curtesie of *England*, 'tis confirm'd by the Statute of the 31 *Hen.* 8. *c.* 10. Wherein all degrees and offices are placed in Assemblies and Conferences, and there the Arch Bishop of *Canterbury* as *primus Par regni* the first Peer of the Kingdom is ranked before all the Nobility, and Seated at the Kings right hand, next and immediately after the Royal Blood, and the Vicegerent, and the rest of the Bishops follow him in their due precedency, according to the Dignities and Aunciencies of their respective Sees. See farther, the Statute of 8. of *Eliz.* *c.* 1. where in that Statute they are called an high, and one of the greatest Estates of the Kingdom, nor were they ever excluded from the greatest Employments of Honours and Trust in the Kingdom, and to evidence, that this is not spoke without Book, we will subjoin a Catalogue of Churchmen Collected out of *Godwin*, *Malmesbury*, *Spelman*, *Dugdale*, and others, *&c.* that have born all, at least the most honourable Offices of State, and (how ever bespatter'd by some) discharged them with much integrity and repute; *England* owing more of its happiness to men of this Calling than any other, though it cannot be denyed but some miscarriages might be here and there found, and yet as few as can be expected in such a Multitude: and if a man were disposed to find fault, he might without much pains takeing two for one in Critically examining any other Profession. Let us begin then with *Englands* Metropolitan, to whom this Primacy justly appertains, and take the rest in Order, onely premising this, that tis true indeed we find fewer of this See upon the Civil Stage than any other, most Offices being lookt upon as below the Archiepiscopal Dignity, and therefore a Nobleman upbraided *Hurbert* Arch Bishop 1199. when he was made Chancellour of *England*, Chief Justice of *England*, and high Governour of all the Dominions under King *Richard* the first, however we shall begin with his Person and See.

Canterbury.

Hubert under *Richard* 1. and King *John*, who intrusted the same Prelate with the Government of the whole Realm at his departure into *Normandy*. *Gualter*, *Reynolds* Chancellour, *Ann. Dom.* 1310. *John Stratford* Chancellour under *Edw.* 3. And when the King Invaded *France*, no Person thought so fit in his absence to have the Government of the Nation entrusted to him. *Simon Islip* of the Privy Counsel to the *Edw.* 3. *John Stafford* to *Hen.* 5. *John Morton* to *Hen.* 6. and *Edw.* 4. But we need not stand upon this, when in truth it hath been seldom known that any of them have been at any time omitted: Nor was this proper only to the times of Propery: Come to the Reformation, we find Arch Bishop *Cranmer*

of the Privy Counſel to *Hen.* 8. and *Edw.* 6. and very active in Civil matters, yet a man ſo averſe to *Rome*, ſo inſtrumental in planting the Goſpel, ſo Laborious, ſo Holy, that a great Apocalyptical man Mr. *Brightman*, *in his Commentaries on the Apocalypſe* [*a man no friend to the* Hierarchy] *takes him to be that Angel pointed at by God*, Rev. 14. *that had power over the fire.* Under the renown'd Queen *Elizabeth*, *John Whitgift* of the Council, and had the Government of the Principality of *Wales* given to him.

YORK.

Walter Gray Chancellour under King *John*, had the Government of the Realm entruſted to him under *Hen.* 3. *William de Melton* Succeſſively Treaſurer and Chancellour of *England*, 1317. *William de Zouche* Vicegerent to King *Edward* *Ann. Dom.* 1346. *John Kemp*, *Ann.* 1425. twice Lord Chancellour. And *Thomas Young* Lord Precident of the North, *An. Dom.* 1561.

LONDON.

There was not long ſince to be ſeen in St. *Pauls* the Monument of *William* Biſhop of *London*, who obtained from the Conqueror the City Charter, to which the Lord Major and his Brethren the Aldermen uſed in a gratefull Commemoration every year to walk on foot: He was Privy Counſellor to King *William* the Conqueror. *Mauritius* Chancellour under the ſame King. *Euſtachius de Falconbridge* one of King *Rich.* 1. his Juſtices, Chancellour of the Exchequer, Treaſurer of *England*, and twice Embaſſadour into *France*. *Henry de Wingham* Chancellour under *Edw.* 3. *Ralph Boldoc* under *Edw.* 1. *Richard Bintworth* under *Edw.* 3. *Robert Braybrook* under *Rich.* 2. *Richard Cox* Dean of *Weſtminſter* (whom I crave leave to name here as belonging to the Dioceſs) of the privy Counſel to *Edw.* 6. And Biſhop *Bancroft* ſent Embaſſadour to *Embden*, to treat with the King of *Denmarks* Commiſſioners, *Ann. Dom.* 1600.

DURHAM.

Geoffrey Rufus Chancellour of *England*, *Ann. Dom.* 1140. *Richardus de Mariſco*, *Ann. Dom.* 1217. *Anthony Beake* of the Privy Councel, *Ann. Dom.* 1294. *Richard de Bury Cancellarius*, *Ann. Dom.* 1334. and Treaſurer, *Ann. Dom.* 1336. *Thomas Langley* Chancellor, *Ann. Dom.* 1406. *Thomas Ruthal* of the Counſel to *Henry* 8. and as his Monument at *Weſtminſter* teſtifies, Secretary to *Hen.* 7. *Richard Neyle* of the Privy Council, *A. D.* 1627. And here we cannot omit that known paſſage of *Newbrigenſis*, who brings in *K. Richard*, making himſelf merry with the Biſhop, boaſting what a feat he had done, *E Vetuſto Epiſcopo novitium Comitem ego mirus artifex feci*, *To make a New Count of an Old Biſhop*, a Priviledge yet continued to that Ancient See.

WINCHESTER.

Swithan Chancellour of *England* under *K. Egbert*, *Ann. Dom.* 860. *William Giffard* Chancellour under the Conqueror, *William Rufus*, and *K. Henry* 1. *Peter de la Roch.* Lord Chief Juſtice under *K. John.* *Sendall* Chancellour, 1316.

William

William Edenden Treaſurer under *Edw.* 3. *William* of *Wickam*, Founder of New Colledge in *Oxon*, Principal Secretary of State, Keeper of the Privy Seal, Maſter of the Wards, and Treaſurer of the *Kings* Revenues in *France*, *Ann. Dom.* 1360. *William Wainfleet* Founder of *Magdalen* Colledge *Oxon* for his great Wiſdom and Integrity long Lord Chancellor of *England* under *Hen.* 6. *Richard Fox* (Founder of C. C. C. *Oxon*) one of the Privy Counſel to *Hen.* 7. (as Prudent a Prince as this Nation hath known)and this Biſhop as wiſe a Privy Counſellor as he a Prince) continually employed either in matters of Counſel at home, or Embaſſies and Treaties abroad.

ELY.

William Longchamp Chancellor, *Ann. Dom.* 1189. after Chief Juſtice and Protector of the Realm, when *K. Richard* the firſt undertook his Journey to the Holy Land. *Euſtacius* Chancellor, *Ann. Dom.* 1196. *John Hotham* Chancellor, *Ann. Dom.* 1317. *Simon Laugham*, *Ann. Dom.* 1361. firſt Treaſurer, then Chancellor of *England*. *John Barnet* Treaſurer, *A. D.* 1366. *John Fordham* Treaſurer, *Ann. Dom.* 1385. *William Gray* Treaſurer, *Ann. Dom.* 1469. *John Alcock* Chancellor, *Ann. Dom.* 1486: And *Thomas Goodrick* Chancellor under *Edw.* 6.

LINCOLN.

Robert Bleuet Chancellor under the Conqueror, *Ann.* 1092. *Alexander* under *K. Henry* the I. Lord Chief Juſtice of *England*. *Galfridus* Chancellour, *A. D.* 1180. *Hugh de Wells* Chancellour. *Ann. Dom.* 1209. *Walter de Conſtantiis* Chancellour under *Hen.* 6. and Dr. *Williams Dean* of *Weſtminſter*, and after Biſhop of this See made Lord Keeper by the Learned *K. James*.

COVENTRY and *LICHFIELD.*

Roger de Wiſeman Keeper of the Great Seal, *Ann. Dom.* 1245. *William de Langton* Treaſurer, *Ann. Dom.* 1226. *Roger Northbrough* Clerk of the Wardrope, afterwards Treaſurer, *Ann. Dom.* 1322. *Geoffrey Blyth* Lord Preſident of *Wales*, *Ann. Dom.* 1513. *Rowland Lee* his Succeſſor in the ſame Office, *Ann. D.* 1535. *Richard Sampſon* in the ſame, *Ann. Dom.* 1537. *William Smith* Founder of Brazen-Noſe Colledge *Oxon*; in the ſame under *Hen.* 8.

SARUM.

Oſmond Chancellor of *England*, always of the Privy Council, and ſeldom ſeparated from the Court, under the Conqueror. *Roger* Chancellor, 1107. and under *K. Stephen*, *Ann. Dom.* 1136. *John Waltham* Maſter of the Rools, *Keeper* of the Privy Seal, and after Treaſurer of *England* under *Richard* the II. *Nicholas Bubwith* Treaſurer, *Ann. Dom.* 1407. *William Ayſcoth* Clerk of the Counſel, *Ann. Dom.* 1438.

BATH

BATH and WELLS.

Robert Burnet first Lord Treasurer then Chancellour of *England*, and always of the Council under *Edw.* I. *John Drokensford* Keeper of the *Wardrope*, *Ann.* 1309. *Robert Stillington* first Keeper of the Privy Seal, then Chancellour, *Ann. Dom.* 1465. *Oliver King* Principal Secretary of State, 1492. *John Clark* Master of the Rolls, *A. D.* 1523.

EXETER.

Leofricus first one of the Privy Counsel, then Chancellour of *England*, under the Conqueror, though Sir *Henry Spelman* reckons him of *Bath* at that time, and possibly he might be of both. *William Brewster* of the Privy Counsel under *Henry* the 3. *Walter Stapledon* Founder of *Exon* Colledge *Oxon* first of the Privy Counsel, then Treasurer under *Edw.* 2. *John Grandesson* Privy Counsellor to *Edw.* 3. *John Voysey* Lord President of *Wales* under *Hen.* 8. *Gervase Babington* Vice President of *Wales*, *A.* 1597.

NORWICH.

Hen. 2. by a special Commission makes the Bishops of *Norwich*, *Winchester*, and *Ely*, Lord Chief Justices of *England* in my Authors words, *Radalphus de Diceto*, *Archi Justitiarios Angliæ*, who there adds, Clergymen were pitched upon by the Kings for this employment, rather than others, for that they were the likeliest persons not to oppress the poor, nor to respect the face of the Rich. *John Salmon* Chancellour, *A. D.* 1319. *Robert Baldock* Chancellour, *An. Dom.* 1324. *John Wakering* Lord Keeper of the Privy Seal, *A. D.* 1416.

HEREFORD.

Thomas Cantelupe Chancellour, *A. D.* 1275. *Thomas Charlton* Lord Treasurer, 1329. *John Gilbert* in the same employment, 1386. *Thomas Melling* of the Privy Counsel to *Edw.* 4. *Charles Booth* Chancellour of the Marches of *Wales*, *Ann. Dom.* 1517.

WORCESTER.

Galfridus Giffard Lord Chancellour of *England Ann. Dom.* 1267. *Walter Reynold* first Treasurer then Chancellour of *England* under King *Edw.* 2. *John Barnes* Lord Treasurer *Ann. Dom.* 1362. *Henry Wakefield* Treasurer, *An. Dom.* 1376. *Nicholas Heath* Lord President of *Wales* and Chancellor of *England* under Queen *Mary*.

CHICHESTER.

Ralph Nevil Chancellor of *England*, *Ann. Dom.* 1222. But Sir *Henry Spelman* reckons it 1226. who saith he was appointed to that Employment by Parliament. *John de Langton* Chancellor under *Edw.* 1. and 2. *John Stratford* Lord Chancellor

Anno

Ann. Dom. 1360. *Adam Molins* Clerk of the Privy Council, *Ann. Dom.* 1451. And that very Learned Prelate and industrious Preacher *Lancelot Andrews* Privy Councellor of *England* and *Scotland*, under a Prince who knew the worth of Learning, and advanced it accordingly.

ROCHESTER.

Walter de Merton Founder of that Colledge that bears his name in *Oxon*, Lord Chancellor of *England*, *Ann. Dom.* 1274. *John de Shepey* Lord Treasurer, *Ann. Dom.* 1358.

OXFORD.

Hugh Curwyn Lord Chancellor of *Ireland.*

St. DAVIDS.

Adam de Houghton Lord Chancellor of *England*, *Ann. Dom.* 1376. *Lindwood* the famous Canonist Lord Keeper of the Privy Seal, *Ann. Dom.* 1440, and a person much employed in Embassies to the King of *Spain*, *Portugal*, *&c.*

I might here add several Deans and Arch-Deacons promoted to the same and like Dignities, and with industrious Mr. *Stow*, take notice that till the dissolution of Abbies and Monasteries, the Prior of *Christ Church* in *London* was ever a Member of the Court of Aldermen; and that the Dean of *Westminster* is by his Charter allowed no small interest in the Government of that Neighbouring City. But I shall not nauseate the Reader any longer with the repetition of any more antient names, but observe (as others have done before me) that in the Catalogue of Chancellors Recorded in *Spelmans Glossery*, amounting to about 170, near a 100 of them were Clergymen, more than all the other Professions put together can make up.

These then are the Honours which (if any humane Testimony can make a thing certain by an uninterrupted Custome (equal to Law) which Wise Antiquity in the best of times gave them, through all the *Saxon*, *Danes*, and *Norman* times, without Controul and Dispute till within these 40 years or thereabout, since which *England* hath groaned under the very great sin of Dispiseing the Embassadors of Christ, and with some *it hath been no small step to preferment to rail at them, to murmure at, and decry their advancements for Secular ends of their own, yea to rank the great Trustees of Souls with the vilest Peasants in the Nation*; as if there were no better way to shew their Love to their Redeemer, and their own Christianity, than by hatred to his Servants who conveyed it to them; as if men had no other way to manifest their respects to the *Majesty of the great God, but by powring out contempt and obloquy upon those who represent his Person.* And thus *Corah* and his accomplices great complaint and grievance against *Moses* and *Aaron* was, That they were too high, took too much upon them, *Numb.* 16. They were advanced and honoured above the rest, this was the main Eye-sore, but the revengeing hand of God would not then bear it. Nay have we not here in *England* dureing our late and unhappy troubles, heard such Language as this (nay have we not seen the thing reduced into practise?) *All the Congregation is Holy, and one may Preach as well as another*: Thus would these Sons of

Confusion have brought upon us a *Monster Confusion and Disorder*, by taking away the *Distinctions of Callings*. The Wise God (we know) appointed it otherwise under the Old Testament, when every one we know was not admitted to the Priesthood. We cannot but think, that there were 1000 in *Israel* who knew *how to kill, slay, and dress a Sheep, Ox, or Goat, as artificially as the Sons of* Levi, *yet none ever attempted it in reference to the Altar without a severe rebuke.* And was *Moses* a more Prudent *Lawgiver* or *Steward* of Gods house than Jesus Christ *the Wisdom of the Father*? Would it be suffered in humane Societies, in any well regulated Corporation that every man who should conceive himself fitter to discharge an Office, manage a Trade, Husband an Estate, should presently exclude another legally possest of it, and invade his propertys? grant this, and farewell Government, and welcome *Babel*. Let me say it once for all, *'tis folly for any to expect the prosperity of the Nation*, whilst the Clergy of it is in Misery, a Low and Despicable Condition, whilst the sacred Function is depos'd, nay with black ingratitude revil'd; to whose learned labours do we owe the Translation of our Bibles, and who, (as before once was intimated) under God were the principal Instruments of delivering us from that *Egyptian* Darkness our Forefathers sate in: Is not this like the Deer we Read of in *Plutarch*, who browsed on that Bush in a Calm he was glad to creep under in a Storm? Certainly they are not worthy the Name of Christians or Friends of the Gospel (whatever their pretences may be) that despise and vilifie the Ministry, than which, nothing more bespeaks a vile and reprobate Heart. We all know that under the Law presumptuously to rise against the Priest was punishable with no less than Death, *Deut.* 17. for these are the Embassadors of the King of Heaven, and how sacred such persons were esteemed by the Laws of all Nations, all Histories do abundantly Witness: 'twas the shame of our Neighbour Nation of *Scotland*, the Murder of the late learned Prelate there, and that small indignities offered to persons of his Rank have been highly resented; the *Ammonites* are a lasting Testimony in the days of King *David*, and proud *Corinth* was for no other reason burnt to ashes by the enraged *Romans*, *Florus*.

CHAP. VI.

The Antient Estate of our Bishops and Clergy under the times of the Britains, Saxons, Danes *and* Normans.

WHat incouragement the Clergy found in the times of the *Britons* will appear to have been very great if we will but read Arch Bishop *Usher de Primordiis Ecclesiæ Britanicæ*, through the Series and Succession of Kings, who when Converted to the Christian Faith, were not scanty in Conferring Honours and Riches upon them: See him in his Sixth Chapter under these Respective Heads, *Antiquitatis Glastonienſis Ecclesiæ assertio & nova ab Ina rege instauratio. Privilegia varia eidem a Saxonibus Regibus. Arthur. donatio & Sepulchri inventio*, Hen. 2. & Edw. 3. *Diplomata. Possessiones & libertates Ecclesiis a Lucio Rege Tributa. Wintonienſis Ecclesiæ libertates & Antiquitates. Fundatio Ecclesiæ Sancti Petri Westmonasterienſis. B. Marcæ Doverienſis & Sancti Martini Cantuarienſis.* Afterwards in his 7th Chapter, *De pace Britanici Ecclesiis post cæptam persecutionem Constantio Chloro*,

Aug. Conſtant. M. patre reſtituta. And afterwards in his 8th Chapter of the *Britiſh* Biſhops, *Qui variis conſiliis interfuerunt, Concilio Arelatenſi, Sardicenſi & Ariminenſi*; where any perſons may receive ſatisfaction of the Clegys Honour in thoſe firſt *Britiſh* times. In the times of the *Saxons* what their immunities were will appear if we inſtance in but one ſingle one, as more eminent and glorious than the reſt (*viz.*) Their Admiſſion to all Publick Debates and Aſſemblies. Such were (1) their *Scire Gemotts*, which *Spelman* and other Learned Antiquaries reſemble to our County Courts, and Sheriffs turn in which all cauſes both Criminal and Civil, concerning Church or State were handled; the perſons bound to be preſent were the Sheriff, the Biſhop and all the Nobles of the County; till at laſt upon their humble Petition in Parliament, the Clergy were diſpenſed with by the Statute of *Marleborough*, 52 *Edw.* 3. unleſs urgent neceſſity required it. Secondly, their *Folk Gemotts* a kind of Annual Parliament commonly held in the beginning of *May*, in which the Princes of the Kingdom, Biſhops, and Magiſtrates, and the Laity took the Oath of Allegiance, and confirmed their mutual Union before the Biſhops. The Original of this is intimated to be as high as King *Arthur*, *Vid. Leg. Edw. Confeſſ.* 35. Thirdly, their *Wittena Gemotts*, or *Michel Synoth*, the grand Convention of their Wiſe men. Theſe who deſires to look farther into, may have recourſe to *Spelmans* laborious Gloſſary, *V. Gemot.* Now out of none of theſe were the Clergy excluded, but ever reckoned an eminent and principal part of each, their Counſels Votes and Approbation demanded and given before any Laws were conſtituted.

For Proof of this, we ſhall look back above 1000 years to the Laws of King *Ethelbert*, and the Authors we ſhall produce, and on whoſe Authority we lean are *Bede*, *Spelman*, and *Lambard*. And as to King *Ethelbert* preſently after the arrival of *Auſtin* the Monk here in *England*, we find as *Spelman* hath it in *Spelm. Conc.* 126. The King to have called a grand Aſſemby, *A.* 605. *Tam cleri quam populi.* In the Laws of King *Ina*, which *Florentius Wigornienſis* dates, *Ann. Dom.* 686. *Spelm.* 692. *Lambert* 712. we find theſe Laws were made and wrote by the perſwaſion and advice of his Biſhops *Hedda* and *Erkenwald*; and though the Learned *Spelman* Excerps out of the body of thoſe Laws only thoſe which more particularly relate to the Church, as being only proper for this deſign, yet *Lambard* mentions many Civil matters there determined. And when the great League and Union between the *Britons*, *Saxons* and *Picts* was concluded, we find it Ratified *per Commune Concilium & aſſenſum omnium Epiſcoporum, Procerum, Comitum & omnium ſapientum ſeniorum & populorum & per preceptum regis Inæ.* The very manner of our paſſing Laws in Parliament now uſed in *England*, *Bed. Eccleſ. Hiſtor. l.* 1. In the Laws of King *Athelſtan* about the year 924. (*Spelm.* 922) there's no mention of any other Counſellors for the enacting, though certainly the form was the ſame, but his *Arch Biſhop Uſhelme* and his other Biſhops, and theſe were at leaſt the prime perſons there, though the Body of the Laws concern ſecular affairs. *Spelman* ſelecting only Eccleſiaſtical, yet in the Title he owns others paſſed. In the Laws of *K. Edmund* about 946. the King had a full meeting of Eccleſiaſticks, and Laicks at *London*, in which were preſent *Odo* and *Wulſtan* the Arch Biſhops, none of the reſt though without doubt there preſent once named. Again 948. to a great Convention of the Eſtates at *London* under *Edred*, Writs of Summons are iſſued out to the *Arch Biſhops* and *Biſhops*, and yet their *agitur de negotiis Regni, Ingulph. p.* 87. *Spel. Conc.* p. 428. Come we to the *Danes*, 1021. we find a Publick Aſſembly called at *Wincheſter* by *Canutus*, where were preſent *Wulſtan* and *Adelholme* the Arch Biſhops

with

with other Biſhops, Dukes and Earls, &c. *Spelm. Conc. p.* 534. Now dureing theſe two Periods theres no mention of Baronies, but all the Churches tenure was in *Pura Eleemoſyna*, *Frank Almoigne* and the Biſhops ſate onely as eminent Prelates by vertue of their Spiritual Dignities; for there being hardly any Laws but ſome way or other concerning Religion, and the good of Souls: therefore in the enacting of them the Cergy was ever required by our Prudent Anceſtors: Thus much for the Grand Aſſemblys, ſtiled uſually by the Learned Knight Sir *Henry Spelman Pan Anglica* and *Pan Britanica*. We will only mention the Private Statute of King *Edgar* which was thus, *ex omni comitatu bis quotannis conventus agitur cui quidem illius Diocæſæ Epiſcopus & Senator interſunto, quorum alter jura divina alter populum edoceto.* Nor doth Mr. *Selden* no friend of the Clergy ever deny or queſtion but the Biſhop was joyned in Commiſſion with the Aarlderman, nay he expreſly affirms the ſame Titles of Honour, *l.* 2. *c.*5. Hitherto of the *Britiſh*, *Saxon*, *Daniſh* Governments, paſs we down to the *Normans*, and here we have King *William* ſolemnly with an Oath ratifying the Laws of St. *Edw.* the Confeſſor, and this particularly is added. *Si quis ſanctæ Eccleſiæ pacem infregerit Epiſcoporum eſt Juſtitia*, *Lambard*, *p.*139. And in ſeveral Old Precidents of Grants ſuch Clauſes as theſe Occur, *Nolumus quod libertas Eccleſiæ per nos vel miniſtros noſtros quoſcunque aliqualiter violetur & jura & libertates Eccleſiaſticas illæſas volentes in omnibus obſervari.* Yet more particularly in a Charter to the Church of St. *Pauls* in *London*, *Tam liberam volumus Eccleſiam, D. Pauli London, quam ſit anima mea in die Judicii.*

And here now at laſt we come to that great change in the State Eccleſiaſtick, the Biſhops who had ever enjoyed the privileges of *Majores Thani* among the *Saxons* are tranſlated to Barons, which gave occaſion to that groundleſs error of ſome, to date the firſt ſitting in Parliament hence, as if the Conquerour to curry favour with the Clergy, and the better to ſettle his new gotten *Kingdom*, confered this Honour upon them; But certainly if there were truth in this, the Clergy are much to blaim, and very ungrateful to their Patron *K. William*, for that we find them looſers by his favours, and looked upon their Condition under him much worſe than before, and all the Writers of that Age muſt be corrected for repreſenting him, as a perfect Enemy of the Church. To clear up this we will only give you one Inſtance, cited from an Old Record, Entituled, *Liber Sancti Albani.* Where we read this Paſſage of *Frederick* the then Abbot of St. *Albans*, that to obſtruct the March of the Conquerour, he cauſed all the Trees round to be cut, and laid them croſs the ways, wherewith the Conquerour being ſtopt in his march ſent in ſome paſſion for the Abbot, who under his ſecurity coming to him, the Conquerour demands the Reaſon for the cutting down the Woods, the Abbot reſolutely anſwers him, that I have done, but what became me, and if all the *Spiritual Perſons* through the Kingdom had uſed their Endeavours againſt thee, as they might and were in duty bound to have done, Thou wouldſt never have been able to have entered the Land thus far. The Duke then replying, *Is the Spiritualty of England of ſuch Power? if I live and enjoy that, which I have gotten, I will make their Power leſs.* Add to this that ſtategem of the *Kentiſhmen* in ſurrounding the King, and forcing him to a Compoſition, which they did under the Conduct of *Stigand* their Arch-Biſhop, which thing ever after netled him, and that he was never heartily reconciled to the Church. and proved afterwards as good as his word to the *Abbot*, oppreſſing the Clergy all his Reign, bringing them under Knights-Service, and Ordering how many Souldiers each Biſhop ſhould maintain for him and his Succeſſors: the Church, [illegible] beforeſaid, being ever

free

free from that bondage. Let no Man then say, that the Conqueror (who was ever look'd upon by the Bishops as their Enemy) did them any *Acts* of *Grace* or *Favour* by erecting each *Bishoprick* into a *Barony*, which thing was ever by the *Bishops* look'd upon as a grievance, and a more glorious piece of slavery. This was indeed a shrew'd shaking to the *Bishops*, yet still they preserv'd their Votes in all *Assemblies*, and Parliamentary Summons are ever directed *Archiep. Ep. &c.* all antient Charters and Grants subscribed after the usual Form in those times, *Testibus Archiep. Ep.* In a Treatise Entituled, *The Form and Manner of keeping Parliaments*, whereof it seems there are two very antient Copies, the M.S. in *Arch Bods*, the other in Sr. *Rober Cottons* Library, the first of which was perused by *Mr. Selden*, and he allows it to be as long standing, as *Edw. 3d.* but the Lord Chief Justice *Cooke* adds near 200 years more, and raises it to the *Conqueror's* time (which the Title indeed pleads for) we are here told, that 40 days before Summons are to be issued out to the *Archbishops*, *Bishops*, and other great *Clarks*, that held by *County* or *Barony*, and that the *Clergy* in each Shire are to have Two *Proctors* representing them, which in some things had more Power than the *Bishops*, for we are there informed, that the K. may hold a *Parliament* for the *Commonalty* of the Realm, without *Bishops*, *Earls*, or *Barons*, so they had summons, though they come not, but on the cottrary, if the Commonalty of the *Clergy* and *Temporalty* being warned, either doth not, or will not come, in this Case whatever the King doth with his *Bishops*, *Earls* and *Barons* is of none effect, for that to all *Acts of Necessity* the *Commonalty* of *Parliament* must consent, i.e. the *Proctors* of the *Clergy*, *Knights* of the *Shire*, *Citizens* and *Burgesses*, for their Persons represent the *Commonalty* of *England*, but the *Bishops*, *Earls*, and *Barons* represent only their own Persons. There is, they say, another M.S. in *Bibl. Cotton*, confirming the same, and citing other large Priviledges of the *Clergy*, I know indeed Mr. *Prime* hath questioned the *Authority* of both these books, in Bar of which I return the Authority of *Cooke* and *Selden*, and particularly the first, who saith, in his *Institutes*, that 26 Spiritual persons ought *ex debito Justitiæ*, to have a Writ of Summons sent them every Parliament. These things premised, we will now desire of the Clergies greatest adversary that he would produce instances of any solemn meetings, *Wittena gemots* or Parliaments whereunto the Clergy were not summoned; any Statutes publickly enacted during all the Christian *British*, *Saxon*, *Danish*, or *Norman* times, without their assistance and advice. As for the precedent of their Exclusion under *Edw. 1.* at the Parliament held at St. *Edmondsbury*, which some triumph in, if there be any truth in the Narrative (as hath been, and is still, questioned) we know, and can prove, 'twas done in a pett and transport of Royal displeasure for their too obstinate adhering to the Bishop of *Rome* in the *Scottish* quarrel, and for their noncompliance with their Kings demands. Who yet the very next Parliament, about a year after, makes an Apology for this charging all upon the Exigencies of his affairs. And why should this single instance so circumstantiated be urged more against the Clergy than that other is against the Lawyers who were shut out of a Parliament under *Henr.* IV. where we yet find the Bishops and amongst others, *Thomas Arundel* stoutly resisting and preserving the Clergies Temporalities, which these Church-robbers gaped after, who, so they might *spare their own Purses were content to spoil their God to relieve their King.* Certainly if envy it self could have found the least colour of Law to deny them this privilege it had never been reserved for this last, and our most unhappy age. Many times have they been struck at, many great blows have they received,

ceived, as at *Clarendon*, under *Henr.* II. where their wings were indeed much clipt, yet their privilege of ſitting and voting in Parliament is left entire to to them for that the words are *Epiſcopi interſint Curiæ Domini Regis cum Baronibus quouſque perveniatur ad diminutionem membrorum vel mortem*, and though they never voted of late in Capital Cauſes, yet that they however made their Proxies I hope ſhall be made appear by what follows, together with their forbearing to vote in Capital Cauſes, and the reaſon of it ſhall be farther diſcourſed of.

CHAP. VII.

The Eſtate of the Biſhops and Clergy from the Conqueſt (as to their Voting in Capital Cauſes in Parliament) till the times of King Henr. VIII.

WE have before intimated the common uſages and rights of the Biſhops to ſit and vote in Parliaments in all antient times, and that as Peers and Barons of the Realm, we now aver they have a Power to ſit and vote in all, as well Criminal as otherwiſe, either by themſelves or Proxies lawfully conſtituted, which is a privilege of the Peerage, and therefore, belongs to the Biſhops as ſuch, 'tis very well known what Mr. *Selden* hath wrote in his Book of *The Privileges of the Peerage of* England, that the Biſhops was debarred of their privileges by an Act of Parliament 17 *Car.* I. *Ann.* 1641. and that he was a great notorious ſtickler in it, but 'tis as notorious that not long after we find the Commons, nay a ſmall and inconſiderable part of that Houſe, voting the Temporal Lords uſeleſs and dangerous, and that how they were enabled by being aſſiſted by the help of *Cromwell* the late Uſurper, and the Army, to accompliſh what they had begun, and the bad conſequence of all we have ſeen with our eyes, and Biſhops God be thanked reſtored to their undoubted Rights and Privileges, and that for as much as they were equally Barons (nay the Biſhops had uſually the firſt in Summons) they have alſo equal privileges to make their Proxies in Parliament as the Temporal Barons had, we confeſs, as before, for that they were Spiritual perſons they were not by the Council of *Clarendon* to ſit in Capital Cauſes, and loſs of limb, but then we muſt know that long before this they both had and exerciſed this Power, as may be made appear out of *John Crampton's Chron.* c. 24. where amongſt the Laws of *Athelſtane* we read, *Epiſcopo jure pertinet omnem rectitudinem promovere Dei* (viz.) *& ſæculi & debent Epiſcopi cum ſæculi judicibus intereſſe judiciis*, and the ordering of all the Meaſures and Weights is there made of Epiſcopal cognizance the Standard being ſtill left in the Biſhops hands, and out of Sir *Henry Spelman's Gloſſary, voce Comes. Comes præſidebat foro comitatus non ſolus ſed junctus Epiſcopo, ut alter alteri auxilio eſſet & conſilio, præſertim Epiſcopus Comiti nam in hunc illi animadvertere ſæpe licuit & errantem cohibere*, ſo much confidence did the Antients repoſe in the Clergy that the guidance and overſeeing of moſt temporal affairs was entruſted to them, nay, they had a check upon the Laity. And thus lovingly with all ſweetneſs and candor for 4 or 500 years, during all the *Saxons* times and till that unhappy diviſion by the Conquerour, who defaced this beautiful and regular compoſure did the Church and State-Officers ſit together in the

morning

morning determining Eccleſiaſtical affairs, and in the afternoon Civil. There were then no jars or claſhings of juriſdictions heard of, *no prohibitions iſſuing out of one Court to obſtruct the courſe of Juſtice in another*; thereby hampering the poor Client that he knew not which way to turn himſelf; and I am perſwaded there is no better expedient to prevent laſting vexatious ſuits, and to relieve the oppreſſed, than again to reconcile theſe two juriſdictions, that according to the primitive uſage as well Spiritual as Temporal Judges may be appointed in all Courts, that *Moſes* and *Aaron* may not interfere and quarrel, but walk hand in hand. Though I know this deſign does not relliſh with many of the *Long Robe*, yet 'tis feared that attempting ſome ſuch thing purchaſed the late Archbiſhop *Laud* no few enemies and was one eſpecial cauſe of haſtening his ruine: yet we find Mr. *Selden* a Lawyer too, *lib.* 2. *de Synedriis*, proving that for the firſt 4000 years and better the Civil and Eccleſiaſtical Courts continued united, and the firſt diſtinction proceeded from Pope *Nicholas*, *Gratian. Diſtinct.* 96. *c. cum ad verum*, and that the Clergy do not meddle perſonally to vote in loſs of life or limb proceeds from the Canons of the antient Church which forbad their preſence in caſes of blood, but I hope that no ſober man will hence argue that they being Barons of this Realm they muſt loſe their Priviledges which belong to the Spiritual Lords as well as to the Temporal; *viz. To make Proxies though in Capital Cauſes (when by the antient Canons of the Church they are forbid to be preſent,)* which they have done, and ſtill have right to doe comes next to be diſcourſed of.

And (firſt) I ſhall make uſe of Mr. *Selden*'s authority, though no friend to the Biſhops, (for reaſons he beſt knew of) who expreſsly ſaith in his Book of the Priviledges of the Barons of *England*, Printed 1642. that *omnes Prælati, Magnates*, &c. had this Priviledge. *Introduct.* Though he ſays there they had loſt it by the Parliament 17 *Car.* 1. 1641. I hope now they are reſtored to it again, that they had before he gives you ſundry inſtances *Cap.* 1. theſe are his words § 2. *That the courſe of Elder time was not that Barons onely made Proxies but other men, as Biſhops, and Parliamentary Abbots, and Priors, who gave their Letters uſually to Parſons, Prebendaries, and Canoniſts. In the Parliament of* Carliſle *under* Edw. 1. *the Biſhop of* Exeter *ſent to the Parliament* Henry de Pynkney *Parſon of* Houghton *as his Proxy. The Biſhop of* Bath *and* Wells *ſent* William of Cherlton *a Canon of his Church, and in like ſort other of the Spiritualty of that time, in the beginning of the* 17*th year of King* Richard *the Second the Biſhop of* Norwich *made* Richard Corqueaux *being then Deane of the Arches,* Thomas Hederſet *being Archdeacon of* Sudbury *and* John Thorp *Parſon of* Epingham *his Proxies by the name of* Procuratores ſive Nuntii, *and in the ſame time the Biſhop of* Durham's *Proxies were* John Burton *Canon of* Bewdley, *and Maſter of the Rolls and* John of Wendlingborough *Canon of* London, *and other like in the ſame time. By which alſo that of the preamble of the Statute of* Præmunire *is underſtood, where it is ſaid that the advice of the Lords Spiritual that was preſent and of the Procurators of them that were abſent, was demanded. The like under* Henry *the* 4*th and* 5*th, are found in the Rolls, and under* Henr. 5. *the Archbiſhop of* York *gives the Proxies to the Biſhop of* Durham, *and to two other Clerks of his Province.* Nay farther, that the Biſhops uſed to give their Proxies in Caſes of Attainder, the ſaid Mr. *Selden* expreſly ſaith in the place forecited, and alſo what ſort of perſons they uſed to make their Proxies, he there likewiſe tells you, adding withal this unhandſom reflexion, *That the Lords Spiritual had ſo much miſtaken of late the Laws of the Kingdom, and the Original of*

their own Honours by endeavouring to enlarge the Kingdom of Antichriſt, that they had now (he means, *A. D.* 42) *loſt both Priviledge and Vote in Parliament.* All ſharp, Reply to which I ſhall purpoſely forbear. And ſecondly, proceed to ſhew you expreſs Precedents wherein they have Voted either Perſonally, or by Proxies in Capital Cauſes, and here I will produce Mr. *Selden* himſelf, the Biſhops adverſary become their advocate, who ſaith expreſsly *p.* 125. *lib. cit.* That though in the Caſe of Appeal of Treaſon in a Parliament of the 11 of *Richard* the Second, commenced by *Thomas* Duke of *Glouceſter* and others againſt *Alexander* Archbiſhop of *York*, *Robert de Vere*, &c. they abſented themſelves, I mean, the whole Spiritualty in that Parliament, and would make no Proxy in their room for that time, yet afterwards they agreed to do it in Caſes of Judgments of Death, *Rot Parl.* 2 *Henr.* 4. & *Rot. Parl.* 2 *Henr.* 5. But he there ſaith, that the firſt uſe of ſuch Proxies was 21 *Ric.* 2. ſo that we have him confeſſing the Biſhops ſitting in caſes of blood by their Proxies, the next authority I ſhall make uſe of, is a Parliament Roll it ſelf, of that year as I find it in Sir *Robert Cotton*'s Collections intituled as followeth. *Placita Coronæ coram Domino Rege in Parliamento ſuo apud* Wegmonaſt. *die Lunæ proximæ poſt Feſtum Exaltationis Sanctæ Crucis Anno regni Regis* Ric. 2. *Poſt Conqueſtum* 21. The Roll it ſelf you may ſee in the Tower among the Records there kept. It is of an Impeachment of the Earl of *Arundel* and *Warr.* &c. for Treaſon, &c. the Articles were exhibited againſt him by ſeveral Lords, as *Edward* Earl of *Rutland*, *Thomas* Earl of *Kent*, *John* Earl of *Huntington*, &c. which the ſaid Lords were ready to prove the Crimes objected, and demanded the Priſoner to be brought to the Bar, which the Lord *Nevil* then Conſtable of the Tower did, and the aforeſaid Lords in their own Perſons appeared alſo. His Articles being read, the Earl of *Lancaſter* Lord Steward of *England* by the King's commandment, and aſſent of the Lords, declares the whole matter. And thereupon the ſaid Earl's anſwer to the *Articles* was demanded, who pleaded two Pardons, and prayeth they may be allowed, but they were not, whereupon Sir *Walter Clopton* Lord Chief Juſtice demands of him what he had farther to ſay, for that if nothing more to ſay the Law would adjudge him guilty. And the ſaid Earl not pleading any thing elſe, the Lords Appellants in their proper perſons require that Judgment may be given againſt the ſaid Earl, as Convict of the Treaſon aforeſaid. *Whereupon the Lord Steward of* England, *by the aſſent of the King, Biſhops and Lords, adjudged the ſaid Earl Guilty and Convict of all the Articles aforeſaid, and thereby a Traitor to the King and Realm, and that he ſhould be therefore Hanged, Drawn, and Quartered, and forfeit all his Lands in fee,* &c. though the Puniſhment, in regard he was of Noble Blood, was changed, and he was ordered to be Beheaded; which was done by the Lieutenant of the Tower, and this is a ſhort account of that Trial for Blood in Parliament. Where 'tis plain and evident that the Biſhops were there preſent, for 'tis ſaid, *that the ſaid Earl was adjudged Guilty and Convict by the aſſent of the King, Biſhops and Lords. Q. E. D.* Next we will produce another Inſtance and Precedent of the Condemnation of *Thomas Arundel* Archbiſhop of *Canterbury*, who was accuſed by the Commons in full Parliament, *die & loco prædictis*, where we find the Commons by their Speaker Sir *John Buſſy* Petitioning the K. in manner following. *For that divers Judgments were heretofore undone, forthat the Clergy were not preſent, the Commons prayed the King that the Clergy would appoint ſome to be their common Proctor with ſuffucient authority thereunto.* Whereupon the Clergy appoint *Thomas de la Percy* by their Inſtrument their Proctor,

who

who together with the King and the ſaid Lords adjudged him the ſaid Archbiſhop guilty of Treaſon, and himſelf a Traitor. The Crimes objected to him was his traiterous obtaining a Commiſſion from the King, whereby the Kings Royal Power was encroached, his Subjects put to death without Royal Aſſent, &c. for all which he was found guilty as aforeſaid. What I obſerve in brief is this, from this Trial.

(1.) That there had been divers Errors in Judgment, which Judgments were in Law void, for that the Biſhops were not preſent, (2.) That hereupon the Commons Petitioned the King that the Biſhops would appoint their Proxy, and which accordingly they did *Thomas de la Percy*. (3.) He was Condemned by the ſaid Court wherein ſate *Percy* accordingly. (4.) That the ſaid Biſhops did not Vote there perſonally, for that the Arch-biſhop their Primate was Arraigned and it might not be ſeemly for them ſo to do. And here we have the Caſe adjudged, Judgments in Parliament Revers'd, for that the Biſhops were not Preſent by themſelves or Proxys, the Commons Petitioning the King that they would make Proxys, a Judgment obtained for that the Biſhops had made their Proxys. *Q. E. D.* And if any be not ſatisfied, they may ſee the Roll of Parliament as before, among the Records in the Tower to which they are Referred. Furthermore to make another diſcovery of the Inconſtancy of the ſaid Mr. *Selden*, I find him in his *Titles of Honour* in the latter end of his Book, Confeſſing that *Thomas Becket* Arch-biſhop of *Canterbury* was Condemned by the *Biſhop of Wincheſter* in Caſe of High Treaſon, *Vid. Titles of Honour*. And if any perſon would but a little reflect upon the Reaſon, why the *Biſhops* have not ſometimes Voted in Caſes of Blood but by their Proxies? (*viz.*) Their reſpect they had to the Canons of the Primitive Church, which might give them umbrage for their ſo doing: And together with this, what hath been ſaid before, of their being frequently appointed by the King, and acting as Lord Chief Juſtices of *England*, any perſon of an ordinary Capacity may gueſs at the Reaſon of their forbearing to Judge in Matters of Blood for the Reaſon aforeſaid, and their ready and chearfull compliance with their Princes Command; when by the Law of this Land they were enabled ſo to do, and which is a ſufficient *Superſedeas* to the former Canon of the Church. Another Precedent we have of the Biſhops Perſonally ſitting in Parliament held at *Weſtminſter* on Monday next after the Feaſt of *All Saints*, in the 3d, of *Hen.* 5. wherein *Henry* Biſhop of *Winton* was Chancellour, wherein was Tryed *Richard* Earl of *Cambridge* and others for Treaſon, for having Levyed men againſt the King, and procured *Edmund* Earl of *March* as Heir to *Rich.* 2. to take upon him to be King of *England*, and had Proclaimed him ſuch in *Wales*, and ſet one *Thomas Trompington* an Ideot and *Scotchman* to Perſonate *Rich.* 2. where the ſaid Earl, and others his adherents in that Action, were Tryed and found Guilty; the Lords Spiritual in Parliament being Preſent, &c. See the Records in the Tower, *Parl.* 3. *H.* 5. *p.* 2. *M.* 4. Many other Precedents of a later Date and Time might be here *Ex ſuperabundanti* added, but I ſhall referr them for the matter of another Chapter, they being all of them taken out of the Journals of the Lords Houſe beginning in 32 *Hen.* 8. and ending 29. *Eliz.* 2. I might have enlarged in theſe which I have taken out of the Tower, but I have purpoſely forborn to do it; for that I find Mr. *Selden* himſelf in the days of 1642. granting me the Matter of Fact as clear and evident from the *Ancient* Records in the Tower, of the Spiritual Lords Priviledges in this Matter. *And* will now proceed to another *Argument* that the *Biſhops* have Right to ſit in all Caſes as well Capital as Civil. For that (4.) they are undoubted Peers of the Realm; which alſo I find Mr. *Selden*

himself granting in his *Priviledges of the Barronage of* England, p. 192. For there he saith, *Though some have doubted* (we know whom he means) *whether the Spiritual Barons are Peers, he saith there, that they are so, is true and plain, and the Testimonies many & various, as in the Bishop of* Winchester's *Case, who departed from the Parliament at Salisbury about the beginning of Edw.* 3. *and was questioned for it afterwards in the Kings Bench he pleaded to the Declaration,* Quod ipse est unus e Paribus Regni & Prelatus, *and in that short Disputation of the Case, which is left in the Year Books; he is supposed both by the Court and Council to be a Peer.* But for this if his Authority be not good, the Year Books themselves may be seen. Bishop of *Wincheſters* Case, *Year Book,* 3 of *Edw.* 3. And *Pas.* 3. *Edw.* 3. *coram Rege Rot.* 9. *Rep.* So afterwards see the Bishop of *Londons* Case in the Year Book, 3 *Edw.* 3. in a Writ of Wards brought against the Bishop of *London*; he pleaded to Issue, and the Defendant could not have a day of Grace; for he said (as the words of the Book are) *That a Bishop is a Peer of the Land,* & *Hæc erat causa,* Year Book, 3 *Edw.* 3. *fol.* 186. *pl.* 28. And in a like Case, an Action of Trespass against the Abbot of *Abingdon* who was one of the Lords Spiritual, day of Grace was denyed against him, because he was Peer *de la terre,* 13 *Edw.* 3. *Titulo Enquest.* So expresly upon a question of having a Knight returned into a Jury where a Bishop was Defendant; the Rule of the Court was that it ought to be so, because the Bishop was a Peer of the Realm, *Plowden Comment. pl.* 117. So the Judgment given against the Bishop of *Norwich* in the time of *Rich.* 2. he is in the Roll expresly allowed to be a Peer. We find also *Stafford* Arch Bishop of *Canterbury* upon his being excluded the Parliament under *Edw.* 3; thus challenging his place, *Ego tanquam major par Regni post Regem vocem habens juræ Ecclesiæ meæ tantum vendico, & ideo ingressum in Parliamentum peto.* The same may be made out farther by an Assignment of Errors under *Hen.* 5. for the revearsal of the Attainder of the Earl of *Salisbury*, one Error is Assigned that Judgment was given without the Assent of the Prelates which were Peers in Parliament, which is clearly allowed in the Roll and Petition too, that they were Peers. So also in an *Act* of Parliament under the same King, *Stat.* 4. *Hen.* 5. *c.* 6. where the Arch-Bishops and Bishops are called Peers of the Kingdom. But of the truth of this Mr. *Selden* himself saith, *That no scruple could ever be made till the unhappy Act of the* 17 *Car.* 1641. And how that *Act* was procured we all know, How full of tumults and uproars were those Times? to how great a distress was Majesty then brought? How many Repulses did it meet with? Was it not Past to serve the present Interest? and by what subtile contrivance was it at last carried it is very well known? Have we not reckoned the Date of our late Embroilments and wild Confusions from this fatal *Apocha*? Under what Miseries, Violencies, and Rapins hath not our native Country for 20 years time from hence to be reckoned, with so much pitty from all true-hearted *English-men* long laboured and groaned? and the whole Christian-world about us stood amazed and agasht. All the Wealth which the Piety of our Forefathers had been so many years in heaping up, all their Priviledges which their prudence had so deliberately conferred, being in a few days Passion swallowed up. Had those good men, the then Bishops, unadvisedly acted any thing against their Prince or Kingdom, could no Personal-fine or punishment expiate their Crime and fault? must the whole Order be raized, and Episcopacy it self destroyed root and branch? must so many merits of their worthy Predecessors be buryed in the grave of ungrateful Oblivion? It were an easy matter to produce a large Catalogue of eminent Prelates, who by their prudent advice have oftentimes prevented Bloodshed, preserved Peace, saved a sinking Kingdom and a dying Religion,

many

many good works have they done amongst us, many Colledges and Schools erected and endowed, many material Churches by their munificence, and living Temples of the Holy Ghost built by their Ministry; and for which of these must they now be thus dealt withal? thus disfranchised? That they who heretofore carried the principal stroke in all Cabinet Counsels and publick Diets, are acknowledged in several recorded Statutes of this Kingdom, an high, and one of the greatest Estates of this Kingdom, as particularly 8 *Eliz. c.* 1. that they are Peers of this Realm, 25 *Edw.* 3. *c.* 6. before recited, and 4 *Henr.* 5. *c.* 6. must now be debarred those immunities of which our Nation hath ever reaped the greatest benefit, they must be curtailde in, or excluded from, what is their just right, to Vote as Peers in the higher House of Parliament, certainly 'tis now high time, if ever, for men to relent of their mercileſs cruelty to to learned Industry; the crafty *Jesuite*, who is now at our Doors, thinks his day is coming, this will make him keep a *Jubile*, to see *England* fall again by her own hands. How much ground hath he got by debasing and pouring contempt on our *English* Clergy, (of all the World) whom he most dreaded? Let us but enquire of other Nations, our Neighbours, and they will tell us, *That the* English *Divine is the terrour of the* Papal-*world, and that they have wrote more, and better, against* Rome, *than all the World besides.* We ought not to take pleasure in upbrading an ungrateful Nation: But is this the reward of their unwearied pains, incessant studies, early rising and late watching, beating their brains, wasting their bodies, and contracting incurable diseases, neglecting their families, relations, and accquaintance for the glory of God and good of their Countrey? Must they onely have discouragements heaped upon them, bread and water, and raggs (if some men had their will) thought to good for them? Must another Profession, of which a Forreiner, by way of disdain, said, *Causidici Angli gens indoctissima ultra Doroberniam nihil sapiunt?* Must they get honour, riches and preferments without the regret and frowns of any, nay more in 60 years last past than Divinity in 600 preceding, and if the matter was not invidious I could easily make appear: 'twas an old saying, *Nulli sua pietas debet esse damnosa*, in earnest, This is not for the honour of the Gospel, neither doth it become the Reformation. Of late years some of the *Long Robe*, no wellwishers to the Church, whose names I forbear, have started a very unhappy and destructive notion, and not over beneficial to the *English Scepter*; and there yet want not those who with much industry keep this notion up, that the three Estates of this Nation consist of King, Lords and Commons, which how far it may countenance former actings and endanger future disturbances, I humbly submit to the prudence of those who sit at the Helm, and are much better able to determine than my self; But the consequences of that opinion seem directly to aim at the Leveling of Sovereignty, and making it accountable to the other two in their esteem Coordinate Estates. Now by restoring the Spiritualty the only true third Estate to its due Rights and antient Priviledges, for that it is the true third Estate, the Lord Chief Justice *Cook* saith in the Fourth of his *Institutes* and the Act of Parliament of the 8 of *Eliz. c.* 1. speaks to the same thing, this may be the most ready and most natural expedient to remove that destructive and dangerous opinion out of the minds of an unlearned and fickle multitude. So may the Crown be safe, and the Mitre no longer trampled on. *Et quæ Deus olim conjunxit, nemo hoc sequiori sæculo seperet, Faxit hoc Deus qui solus potis est!*

CHAP.

CHAP. VIII.

Precedents of the Biſhops Sitting and Voting in Capital Cauſes from the Reign of of King Hen. 8. *till the* 29th *of* Eliz.

I ſhall begin with the Attainder of *Cromwel* Earl of *Eſſex*, who was attainted in Parliament for Treaſon, *&c.* the Articles are every extant, and may be ſeen; the firſt reading of his Bill, as I find it in the Journal of the Lords Houſe was upon the 17th of *June*, 32. *Hen.* 8th, at which reading were preſent Fourteen Biſhops; who they were you may ſee in the Journal; at the ſecond reading, which was the 19th of *June* of the ſaid year, 32. *Hen.* 8. were preſent ſixteen Biſhops, whoſe Names, and Sees there you may find; at the third and laſt reading, were ſixteen likewiſe, *Vid. Journal ut ſupra*, the Bill it ſelf paſt the Royal Aſſent, the 24th of *July* following, when were 14 Biſhops preſent. The next ſhall be the Attainder of *Tho.* Duke of *Norf.* and *Henry* Earl of *Surry*. 38. *H.* 8. This alſo was an Attainder in Parliament: The firſt reading of the Bill againſt theſe Noble Lords, was on the 18th of *January*, *Anno Regis ſuprà dicto*, when were preſent ten Biſhops; the ſecond reading, was the day following, when were preſent nine Biſhops: The third and laſt reading was on the 20th of the ſame Moneth, when were preſent thirteen Biſhops; the Bill paſt the Royal Aſſent, *January* 27th, 38. *Hen.* 8. the Biſhops likewiſe then preſent. The third inſtance of *H n* D. of Suffolk, which indeed was an Attainder at Common Law, but afterward confirm'd in Parliament. *A.* 1 & 2. *Phil. et Mar.* at the firſt reading were preſent 12 Biſhops: the Bill was read, 5 *Jan. Anno ſupradicto*, at the 2d. reading, which was two days after on the 7th of *January* were preſent eleaven Biſhops; and on the next day, the Bill had its laſt reading in the Lords Houſe, at which were preſent eleaven Biſhops: the Lords Spiritual, were likewiſe preſent at the paſſing of the Bill; which was on the 21 of *Jan.* following; in each of theſe, the Journal if conſulted will ſatisfie any. The 4th Precedent ſhall be in *Seymore* the Lord Admiral, who was attainted for Treaſon, in the 2d. of *Edw.* 6. for that he purpoſed to deſtroy the young King, and to tranſlate the Crown unto himſelf; for which, and other Crimes objected, he ſuffered Death, on the *Tower-Hill*: at his Attainder were Preſent nineteeen Biſhops. I might have before added the Caſe of the Lord *Hungerfords* Attainder in Parliament; who was condemned in Parliament, in the 32. of *Hen.* the 8th. at whoſe Tryal and Condemnation, were Preſent no fewer than ſeaventeen Biſhops, *Vid.* Journal of the Lords Houſe; I will only add two more Precedents, and cloſe with them; they are in the Reign of the Peaceable Queen *Elizabeth*, in whoſe times if ever, the Actings in Parliament were regular, and orderly: the firſt is, the Caſe of the Earls of *Northumberland* and *Weſtmoreland*, for their Rebellion in the North, and endeavour to bring in Popery, at whoſe Condemnation were preſent thirteen Biſhops, *Vid.* Journal, and laſtly that of *Pagets*, in the 29th of the ſaid Queen, at which were ten Biſhops, *Vid.* Journal as before: I ſhall only add one thing more, and that is the Proteſtation of the Biſhops. 11. *R.* 2 where they give the reaſon why they refuſed, to be put in ſome Parliaments, their words *Quia in hoc Parliamento agitur de nonnullis materiis in quibus non licet nobis juxta ſacrorum Canonum inſtituta quomodolibet perſonaliter intereſſe*, but they there add a *Salvo* to their right, in the beginning of their Proteſtation. *Quod Archepiſcopum Cantuar. qui pro tempore fuit, nec non cæteros ſuos ſuffraganeos Confratres, Co-epiſcopos, Abbates et Priores alioſque Prælatos quoſcunque Boroniam de Domine Rege ſedentes in Parliamento Regis ut Pares præd. perſonaliter intereſſe pertinet, ibidemq; de regni negotiis & aliis ibi tractari conſuetis cum cæteris dicti regni Paribus & aliis conſulere, ordinare, ſtatuere definire ac cætera facere, quæ Parliamenti tempore ibid. intendet facien'*, &c. tis true indeed, that as they never intended, but that the Appeals, Purſuites, Accuſations, Judgements, had and rendred, *&c.* upon their voluntary abſenting themſelves; they ſhould be good and valid in the Law, as their Proteſtation expreſly granteth: yet by the ſame their Proteſtation, they reſerve their right of being preſent, *&c.* doing every thing elſe which any other Peer, though *Temporal* might do. And that they did Vote in the 21ſt of this Kings Reign, by their Proctor in the Condemnation of the Arch-Biſhop of *Canterbury (Yea and upon the Commons Petition too, for that many judgments had been reverſed, for that they were not preſent as is before proved)* and *Perſonally* alſo in the Condemnation of the Earl of *Arundel* and *Wardour*, *&c.* the Duke of *Lancaſter* being then Lord High Steward, *Vid. Placit. Coron.* &c. 21 *Ric.* 2. in the Records in the Tower. The Roll marked with the Letters *F. I.* It is well known that out of reſpect to the conſtitution made in the Council held at *Weſtminſter*, that no Clergy-man ſhould *agitare Judicium Sanguinis*. (This Council is mentioned in *R. Hovenden in H.* 2. p. 30.) the Clergy have ſome time forborn to intermeddle in ſuch matters: and on the other ſide 'tis as notorious, that many of that Order have been Lord Chief Juſtices of *England*, and that none have diſcharged that Office better, more to the Content of the King and Subject, and the Benefit of the whole Commonwealth.

3.12.

THE

RIGHTS

OF THE

BISHOPS

To JUDGE in

Capital Cases

IN

PARLIAMENT,

CLEARED.

Being a Full Answer to *Two Books* Lately Published; The First Entituled, *A Letter from a Gentleman to his Friend*, &c. The other, A *Discourse of the* Peerage *and* Jurisdiction *of the* Lords Spiritual *in Parliament*: *Endeavouring to shew the Contrary.*

The Second Edition with Additions.

LONDON,

Printed by *Tho. Braddyll*, for *Robert Clavel*, at the *Peacock* in St. *Pauls* Church-Yard, MDCLXXX.

THE

RIGHTS

OF THE

BISHOPS

TO JUDGE IN

Spiritual Causes

IN

CLERICIS.

TO THE READER.

THis Book which is here put into thy hand, contains a Reply, and I hope a full and ſatisfactory one, to two ſmall Treatiſes lately written concerning the Juriſdiction of the Lords Spiritual in Parliament; The firſt Entituled, A Letter of a Gentleman to his Friend, ſhewing, That the Biſhops are not to be Judges in Parliament in Capital Caſes. The Second, A Diſcourſe of the Peerage and Jurisdiction of the Lords Spiritual in Parliament, &c. Both of theſe pretend to be an Anſwer to another Treatiſe Publiſhed ſome few Months ago, entreating on the ſame Subject; and called, The Honours of the Lords Spiritual Aſſerted, &c. How well each party hath perform'd his Undertaking, and on whoſe ſide the Truth ſtands, the Impartial and knowing Reader is the fitteſt Judge; and therefore I ſhall not here go about to caſt any odious or unbecoming Reflections upon either of thoſe Books, or the Authors of them. No Ingenious or Knowing Perſon will miſrepreſent the Sence or Opinion of his Adverſary, much leſs will entertain him with Reproach and Calumny, inſtead of Argument; a weak Cauſe may indeed ſtand in need of ſuch Supports; but a good one will contemn them: If the Latter of theſe Authors have employed and made uſe of any ſuch Auxiliaries in his Preface, where he goes about to make that Author he pretends to refute, to ſpeak things not only falſe but impoſſible; as that the Gentlemen of the Houſe of Commons in the laſt Parliament, were the perſons that threw down Epiſcopacy in 44, when either they, or a great part of them were then unborn, or their Fathers by their Princes Command in open Field at that time aſſerting it; that theſe, when as yet they were not in being, or at moſt but Infants and Children, ſhould plunder and rifle their own Fathers Houſes; or that their Fathers ſhould at laſt ſpill their Princes Blood, for the ſaving whereof they loſt their own, are ſtrange Inventions; Thoughts, I am ſure, never entered (if he believed what himſelf wrote) into any Bodies Head but his own; In thoſe his Atchievments he ſhall not be followed by me. His Adverſary in his Preface is plain; Thoſe againſt whom his Diſcourſe (he there ſaith) is aimed, are the Remainders of the Men of 42, who plead for, and juſtifie the Late Rebellious Commotions in Scotland, who have been Actors of theſe in our own Kingdom, who in thoſe late ill times broke through all Obligations both Sacred and Civil, to undo a Kingdom, &c. Theſe are the men, (and from my heart I wiſh this Author is not one) who for other and By-Ends raiſe Jealouſies and Diviſions at this ſo Evil and Critical a Time, when rather we ſhould be all of us joyning againſt the Common Adverſary: I am heartily ſorry that the Gentleman hath made himſelf ſo Signal an Inſtance for want of Candor and Veracity, and that his Reader ſhould have occaſion from hence to gather what he may expect in his Book, ſuch

Exploits

Exploits and Victories as these, as Hannibal *said of his at* Cannæ, *will undo him; if he is a person that lies under no Temptation from Religion, a secure man, above either Honour or Conscience, this palpable Detection of him will not ('tis to be feared) bring him to a* Palinode & Retractation; *but if otherwise, he will I hope, do himself and that Author the Right as openly to acknowledge the Injury, as he hath causlesly misreported him.*

As to the Books themselves; there is nothing I am perswaded in either of those Treatises which is not here fairly Answered, without either Raillery or Misrepresentation; those excellent Epithetes of Petulant, Impertinent, Ignorant *and* Impudent, *with which he doth so plentifully bedeck his Adversary, are (I think) very fit Lading for his* Dung-Carts *and* Oyster-Boats; *and if the Gentleman be a Dealer, and uses to trade in such Commodities, I heartily wish him a* Good Mart *to vend them in; and that in his* Next Adventure *he may be a* greater Gainer *than he hath been now by this* Bargain. *And thus, in short, I refer the Matter in Debate to our Readers Judgment in the perusal of this Book.* Farewel.

THE

THE RIGHTS OF THE BISHOPS To JUDGE in CAPITAL CASES IN PARLIAMENT CLEARED:

Being a Full ANSWER to the late LETTER of a GENTLEMAN to his FRIEND, Endeavouring to ſhew the Contrary.

SEeing the Gentleman who is the Author of the Letter that pretends to ſhew, that Biſhops are not Judges in Parliament in Capital Cauſes, either in giving the judgment it ſelf, or in reſolving and determining of any Circumſtance, preparatory and leading to that Judgment (for ſo he States the Queſtion, *pag.* 1.) hath thought fit to take the Method, which he thought the fitteſt for his purpoſe, to run through all the Rolls of Parliament that are extant in the Tower, and to take notice (as he ſaith he hath done) of all the Tryals there Recorded, as well in Caſes Capital as thoſe which are not ſo; and to ſhew the difference in the Parliamentary proceedings upon them, how the Biſhops and Prelates did commonly joyn with the Temporal Lords, in Judging thoſe that were not Capital, and yet not always ſo, when the Crimes were of a bigger Magnitude, and yet never but once, when the Accuſation was for a Capital Crime, which was in the Caſe of the Duke of *Suffolk*, 28. *Hen.* 6.

when the whole Proceeding (as the Author gives out) was ſo irregular and unparliamentary [an aſſertion by the by] very uſual with him when any Precedent toucheth him to the quick, as that of the Biſhops appointing Proxys three times in one Parliament, 21. *Rich.* 2. this he calls Unparliamentary, Unuſual, *pag.* 28, 30. Irregular, *p.* 79. and which is declared (as he confeſſeth) the exact Law of the Land in the *Year Book* of 10. *Edw.* 4. *Term. Paſch. n.* 35. This he calls *Error Temporis*, and this it ſeems is his ordinary way of anſwering to the Precedents and Law that make any way againſt his Aſſertion; that they are Irregular, Unuſual, Unparliamentary, Extravagant and *Errores temporis*, great miſtakes of thoſe times. A ſharp Sword I muſt confeſs this Gentleman wears, one of the Younger Houſe to that of the great *Alexander*, that can eaſily (ſo truſty and trenchant is his *Toledo*) cut aſunder the moſt *Gordian* Knot, which cannot otherwiſe be untyed, but by the way, this may be thought rather to make for the Gentlemans ſtrength and valour in the diſpatch, than any extraordinary Skill or Art in the Performance.

Seeing this I ſay is the way which this Author takes, I ſhall endeavour to follow him κατὰ πόδα, ſtep by ſtep, and ſhall take notice of any thing that hath been offered by him, that is any ways material or advantageous to make out his Aſſertion, and I hope give a brief but a ſatisfactory account of his whole Book, and the Caſes therein mentioned and ſet down, that they are not in any wiſe Argumentative to prove the thing in Queſtion, and what this Gentleman undertakes to evince, *viz.* That the Biſhops are not to be Judges in Capital Cauſes in Parliament: But before I do this, I ſhall lay down ſome Conceſſions and Aſſertions of this Author, which I ſhall make uſe of as Hypotheſes and Poſtulata's? [for what is more equitable, than that a man ſhould be juſt to, and ſtand or fall to his own Word and Grant or Conceſſion] by which it will plainly and eaſily appear, he hath unfortunately engaged in this Quarrel by granting the thing he ſeems to deny, and ſo indeed and in truth pleads and argues for what he intends to write againſt: which is in Effect the Man againſt Himſelf.

I. It is agreed on betwixt us; [for ſeeing the Gentleman is ſo liberal, what he gives and grants, I ſhall, as tis juſt for me to do, accept and make uſe of] and tis Confeſt eſpecially by this Author, in the Parliament of the 11. of *Ric.* 2. the Proteſtation of the Lords Spiritual therein to be a perfect and compleat Law, *pag.* 74. which I ſhall exactly ſet down, and ſhall do it faithfully, which is not done by the Gentleman, as ſhall afterwards be made appear, for that he hath left out the moſt conſiderable things therein that make againſt him, nay indeed which turn the Ballance and prove quite the contrary to what he undertakes to Evince: That the Biſhops by the Law and Cuſtome of *England*, (*de jure & Conſuetudine Regni* are the Words) may as Peers of the Kingdom be perſonally preſent in all Parliaments, and there Conſult, Vote, Enact and Determine of the Affairs of the Kingdom, and of all other matters there accuſtomed to be Treated of, as well as any other Peer of the ſaid Kingdom, and to do every other thing which in time of Parliament

liament is to be done. The Proteſtation I ſhall here ſubjoyn, and give you an account afterwards of what the Gentleman hath ſet down of the reſt of it which makes directly againſt himſelf, that he thought fit, for Reaſons he knew of, to ſmother and conceal, at leaſt not to acquaint his Reader with, which had he done, his Pains and Labour in the Affair might well have been ſpared. The Proteſtation is as followeth,

IN Dei Nomine, Amen, Cum de Jure & conſuetudine regni Angl. ad Archiep. Cantérbur. qui pro tempore fuerit, nec non Ceteros ſuos ſuffraganeos, Confratres & Coepiſc. Abbates & Priores, alioſque Prelatos, quoſcunque per Baroniam de domino noſtro Rege tenentes pertinet in Parliamentis Regis quibuſcunque ut Pares regni predicti perſonaliter intereſſe ibidemque de regni negotiis & aliis ibi tractari conſuetis, cum ceteris dicti regni paribus & aliis ibidem jus intereſſendi habentibus conſulere & tractare, ordinare ſtatuere & definire ac cetera facere que Parliamenti tempore ibid. iminent faciend. in quibus omnibus & ſingulis nos Willielmus Cant. Archiepiſcopus totius Angl. Primas & Apoſtolice Sedis Legatus, pro nobis noſtriſque Suffraganeis, Coep. & confratribus, nec non Abbatibus, Prioribus & Prelatis, omnibus ſupradictis proteſtamur, & eorum quilibet proteſtatur qui per ſe, vel procuratorem hic fuerit modo preſens & publice & expreſſe quod intendimus & intendit, volumus ac vult eorum quilibet in hoc preſenti Parliamento & aliis ut Pares regni predicti more ſolito intereſſe, conſiderare, tractare, ordinare, ſtatuere & definire, ac cetera exercere cum ceteris jus intereſſendi habentibus in eiſdem ſtatu & ordine noſtris, & eorum cuilibet in omnibus ſemper ſalvis. Verum, quia in preſenti Parliamento agitur de nonnullis materiis, in quibus non licet nobis aut alicui eorum juxta ſacrorum Cannonum inſtituta, quomodo libet perſonaliter intereſſe; ea propter pro nobis & eorum quolibet proteſtamur eorum quilibet hic preſens etiam proteſtatur, quod non intendimus, nec volumus ſicuti de Jure non poſſumus nec debemus, intendit, nec vult aliquis eorundem in preſenti Parliamento, dum de hujuſmodi materiis agitur vel agetur, quomodo libet intereſſe, ſed nos & eorum quemlibet in ea parte penitus abſentare, Jure Paritatis noſtre, & cujuſlibet eorum intereſſendi in dicto Parliamento, quoad omnia & ſingula inibi exercenda noſtris, & eorum cujuſlibet Statui & ordini congruentia in omnibus ſemper ſalvis. Ad hec inſuper proteſtamur, & eorum quilibet proteſtatur quod propter hujuſmodi abſentiam non intendimus, nec volumus, nec eorum aliquis intendit, vel vult quod proceſſus habiti, & habendi in preſenti Parliamento, ſuper materiis antedictis. In quibus nec poſſumus, nec debemus, ut premittitur intereſſe quantum ad nos & quemlibet eorum attinet futuris temporibus, quomodo libet impugnentur infirmentur ſeu etiam revocentur.

IN *the Name of God Amen. Whereas by the Law and Cuſtom of the Kingdom of* England, *It doth belong to the Arch-Biſhop of* Canterbury *for the time being, and the other his Suffragans, Brethren, and fellow Biſhops, Abbots, and Priors, and all other Prelates whatſoever, who hold by Barony of our Lord the King, to be perſonally preſent in all Parliaments whatſoever, as* Peers *of the Kingdom, and there to Conſult, Treat of, Ordain, Conſtitute, and Determine of the Affairs of the Kingdom and other things there uſually treated of, together with the reſt of the Peers of the ſaid Kingdom, and others having intereſt there; and to do all other things which there may happen to be done. In all and every of which, We* William *Arch-biſhop of* Canterbury, *Primate of all* England, *and Legate of the Apoſtolick See, do Proteſt for our Selves, our*

Suffragans

Suffragans and Fellow Biſhops, and all the Abbots, Priors, and Prelates aforeſaid, and every one of them doth Proteſt by themſelves, or by his Proxy, if ſo he was preſent, both publickly and expreſly, that we intend, and do intend, and every one of us will in this preſent Parliament, and in all others, be preſent as Peers of the ſaid Kingdom, in the uſual manner, to conſider of, Treat, Enact, Conſtitute, and Determine; and to to do all other things with others who have power of being preſent in the ſame, our Eſtate and Order, to every one of us in all things ſaved unto us entire. But becauſe in this preſent Parliament, ſome matters will be Treated of, in which it is not lawfull for us, or any of us according to the **Inſtitutions of the Holy Canons or Canonick Law in any wiſe** *to be Perſonally preſent: Therefore for our ſelves, and for every one of us, We Proteſt, and every one of us here preſent doth Proteſt, That We intend not, neither will, as by the Law We cannot, neither doth any of us intend, nor will any of us in any wiſe be preſent in this preſent Parliament whilſt any of thoſe matters are Debated, or ſhall be Debated of. But upon that account We and every one of us will abſent our ſelves; the Right of our Peerage, and the Right of every one of us being preſent in the ſaid Parliament, as to all and every thing there to be done agreeable to our Eſtate and Order in all things to every one of us ſaved entire. Moreover we Proteſt, and every one of us doth Proteſt, that by reaſon of our abſence as aforeſaid, we intend not, nor will, neither doth any one of us intend or will, that the* Proceſs *had or to be had in this preſent* Parliament *in the matters aforeſaid, in which we cannot and ought not as aforeſaid to be preſent; as to what relates to us or any of us, ſhall in time to come be in any wiſe impugned, weakned or repealed.*

And for a farther Diſcovery and Manifeſtation of the Rights of the Lords Spiritual, to Judge in Criminal Cauſes in Parliament, I ſhall ſubjoyn a more full and ample Proteſtation on Record in the Parliament, *Roll of the* 28 *H.*6. wherein to make the matter out of all Controverſie and future Queſtion (to which this Author alſo for the Fact doth agree) *viz. That it is there on Record*, though he hath not Cited the Place faithfully and Ingenuouſly as he ought to have done; for that he hath as in the foregoing left out that which makes againſt him (for which he can never be excuſed) having Quoted what goes before and what follows after, and left out theſe Words, *viz.* **In caſe of their Peerage hereafter, as freely and as largely as they or any their Anceſtors or Predeceſſors**, &c. which are the Ground and Foundation of the Lords Spiritual and Temporal their Proteſtation. And which beyond all contradiction makes it out to be the joint Right of both theſe two High and Honourable Eſtates: And not only I ſay and I think with ſome ſhew of Reaſon, (I will not ſay as this Author hath done on another account [*with ſome Confidence*] but Demonſtration alſo do Evince the Poſition, which is quite contrary to what he undertakes to make out. That the Power of Judicature in Parliament is (on the account of their *Peerage*) the undoubted Right of both the Eſtates Spiritual and Temporal; and this will the more clearly appear, for that both the Lords Spiritual and Temporal here joyn in Aſſerting their joynt Rights, which the Lords Temporal would never have done, to their own diſadvantage, by joyning themſelves herein with the Lords Spiritual, and thereby avouching the Lords Spiritual Right to Judicature

to

to ſtand on the ſame Foundation and Bottom with that of their own, (*viz.* **As before on account of their Peerage.**)

The Words of the Roll of Parliament are theſe:

AND forthwith the Viſcount Beaumont **on the behalf of the ſaid Lords Spiritual and Temporal, and by their Advice, Aſſent and Deſire, recited, ſaid and declared to the Kings Highneſs, That this that was ſo Decreed concerning the Perſon of the ſaid Duke,** Will. de la Pool Duke of Suffolk, **proceeded not by their Advice and Counſel, but was done by the Kings own Demeanance and Rule, therefore they beſought the King that this their ſaying might be Enacted in the Parliament Roll for their more Declaration hereafter with this Proteſtation: That it ſhould not be, nor turn in prejudice, nor derogation of them, their Heirs, nor of their Succeſſors in time coming, but that they may have and enjoy their Libertys and Freedoms in Caſe of their Peerage hereafter, as freely and as largely, as they, or any of their Anceſtors had, and enjoyed before this time.**

The occaſion of this Proteſtation was, for that the King *H.* 6. had upon the Duke of *Suffolks* ſubmiſſion of himſelf to the Kings Pleaſure, taken the Matters contained in the Bill for high Treaſon againſt him in Parliament, out of the Parliament to give Judgment therein ſolely and by himſelf in an extrajudicial manner. Hereupon the Lords Spiritual and Temporal by the mouth of Viſcount *Beaumont* Proteſt as before. The matter and ſubſtance where of our Author granteth and acknowledgeth onely with ſome, and they the moſt material Omiſſions as before. This he doth plainly and expreſly, *pag.* 47. But of the particular caſe and matter, I ſhall ſpeak more fully when I come in order to it. Only I would have the Reader take notice that theſe matters were not unknown to the Author, but that he did moſt partially relate them in omitting the moſt principal matter in the Proteſtation.

II. 'Tis confeſt and agreed by the Gentleman, *pag.* 118. that in Caſes of Attainder, which yet are Caſes of Blood, the Biſhops may, may ought to be preſent; and here matters of Blood are agitated as well as in the Judicatory of Parliament: And it will not be very material (in the Judgment of any conſidering Perſon) which way a mans Life is taken away, whether by way of Attainder or Impeachment, or both, ſo as his Life is taken away; for that there is in either way matter of Blood in Queſtion: And then by this we may ſee, (*viz.* the Preſence of the Biſhops in Caſes of Attainder as by him confeſt) that this *Law of Laws*, as he by way of Jeer calls it, was not looke upon by them in all Points and Circumſtances, ſo indiſpenſably obliging.

III. He acknowledgeth, That a whole Houſe of Commons with their Speaker did ſolemnly, openly, and in full Parliament, Petition the then King in manner following: That foraſmuch as divers Judgments in Parliaments had been heretofore undone and repealed, for that the Lords Spiritual were not preſent at thoſe Judgments (they deeming that they ought not to be preſent in Judgment where matter of Blood was agitated, *Secundum Sacrorum Canonum inſtituta*, the Canon Law interdicting them) and ſo the Parliament then not being full [for no other reaſon can be given of the

Biſhops abſenting themſelves, and of the Repeals which thereupon follow-ed] That the King would command the *Biſhops* to make ſome their common Procurator with ſufficient Authority thereunto, which would put an end to all Controverſies. The *Biſhops*, (not Clergy) being ſeverally examined, appointed Sir *Thomas de la Percy* their Proctor to Aſſent on their behalf, as by their publick inſtrument on Record in the Roll of Parliament it appeareth; and this they did do three times, either by publick inſtruments, or otherways in three ſeveral Caſes of *Blood* in the Parliament of the 21 or laſt Parliament of *Rich.* 2. And to what this Gentleman ſaith concerning its Repeal, I queſtion not but to give him and the Reader full ſatisfaction both from the Authors Conceſſions, and from reaſon it ſelf, that his anſwer herein is altogether inſignificant, and ſo of no uſe to him as to the cauſe in hand, when I ſhall come to the particular matter it ſelf: This he confeſſeth, and it is clear, and the Record ſaith the ſame was done at the *Petition of the Commons, and particularly and expreſly for the Reaſons aforeſaid.* And my ſelf as well as this Author can give you very good Reaſons to make you confeſs and believe that the Commons would not have in this Conjuncture any new Priviledges to be granted to the Clergy, and therefore on neceſſity and for the common good, that Judgments had been Repealed, *&c.* upon no other ground; for that both Lords and Commons did both joyn againſt them, during this Kings Reign, as in the 20 of *Ric.* 2. and twice before in the Preceeding Kings Reign, *viz.* 45 *Edw.* 3. where we have a complaint of both Lords and Commons that the Government of the Kingdom was in the hands of the Clergy, whereby they pretended that great miſchiefs and damages happened to it, *&c.* therefore they require that Lay-men (you ſee the reaſon of all) might be made Principal Officers of the Kings Court and Houſe, *&c.* to which the King returns them this anſwer **Le Roy laviſera**, a modeſt denyal: And from King *Richard* his Succeſſor they had a worſe, an abſolute chide, for which they afterwards humbled themſelves and craved Pardon, *Cott. Abr. p.* 362. *numb.* 16. Now as to the Proceedings of Parliaments Repealed, becauſe of the abſence of the *Biſhops*, what they were, and when they were, certainly the Speaker and Commons were ready to produce and to prove the fact if challenged, elſe the Prayer of their Petition had been groundleſs, if there had been no ſuch Errors in Judgments on ſuch accounts, & they are to be ſuppoſed (being nearer to theſe times, and ſo the things freſh in their memory) abler to produce them, than we at this diſtance of time, for tis not reaſonable to think, (I ſpeak as to the probability of Reaſon) that ſo Grave, Knowing, and Learned a Body as the Houſe of Commons is, would openly in full Parliament, in ſo ſolemn a manner affirm a thing which could not be made out, and was not certain, and the contrary thereof ſo eaſie, if any ſuch had been to be made appear. Now for the Author to demand from us what thoſe Judgments in particular were at that diſtance of time is neither equitable nor rational, for how little of the Rolls of Parliament before thoſe times do to us remain, there being no Records at all in the Tower, except ſome few Charters and their Exemplifications ancienter than the firſt year

of

of King *John*, all the rest from *William* the first his Reign till then being utterly lost, the first Parliament Rolls yet remaining are these of the 5, 8, 9, and 19. of *Edw.* 2. The Statute Roll of *Hen.* 3. *Edw.* 1. and *Ed.* 2. concerning onely some Statutes made in their Reigns, some Memorials of Acts and Ordinances made in the Reigns of K. *John*, *Hen.* 3. *Ed.* 1. and *Ed.* 2. the Rolls whereof are perished and quite lost. The reasons and occasions thereof Mr. *Prinn* gives his Reader at large in his Preface to the Reader in the Abridgement of Sir *Robert Cotton*, and to which I refer the Author that he may not say tis a *thing begg'd*, or *gratis dictum*. Nay farther to shew the unreasonableness hereof, I will onely add this one supposition: If the House of Commons of the last or other preceeding Parliaments had made such a Petition to their Prince, and had so openly and solemnly averr'd a matter of Fact, and made it the ground of their Petition, and the thing in it self not so, the Author sure nor any reasonable person reflecting upon the learning and integrity of that great and honourable Body, will ever (I perswade my self) do it. Tis on Record in the Holy Writ, that *Solomon* spake three thousand Proverbs, and that his Songs were 1005, that he wrote of Trees from the *Cedar* that is in *Lebanon* even unto the *Hyssop* that springeth out of the Wall, that he spoke of *Beasts* and of *Fowl*, of *Creeping* things and of *Fishes*, and yet no other Memorial of these *Books* are any where extant or on Record, but that they were on the other side is most certain. The same I say of those Judgments in Parliament which are lost, both those and these are to be reckoned *inter deperdita*, things which were once extant but now lost.

IV. Tis agreed on both sides betwixt the Author and my self: That upon the Kings taking the cognizance of a Cause of *Blood* then before the Lords in Parliament into his own hands, thereby to determine of it in an extraordinary way we find the Lords Spiritual and Temporal, openly by Protestation asserting their Judicature, that the Kings interposing should not in any wise in times to come be any prejudice, or any ways derogate from them or their Successors Rights; here was present the two Arch-bishops 13 *Bishops*, 2 *Abbots*, and the Prior of St. *John* of *Jerusalem*. The Protestation was made as the Author saith by Viscount *Beaumont*, *pag.* 47. and it was on the behalf of the Lords Spiritual as well as Temporal, and by their joint assent, advice, and desire, recited and declared to the Kings Highness, in manner and form following:

That this that was so decreed and done by his excellency concerning the person of William de la Pool **Duke of** Suffolk, **proceeded not by their Advice and Counsel, but was done by the Kings own Demeanance and Rule, therefore they besought the King, that this their saying might be enacted in the Parliament Roll for their more declaration hereafter, together with the Protestation, that it should not be nor turn in Prejudice nor Derogation of them, their Heirs, nor of their Successors in time to come, but that they may have and enjoy their Liberties and Freedoms in case of their Peerage as largely as ever their Ancestors or Predecessors ever had enjoyed before this time,** *Vid. pag.* 48. where the Protestation is by him set down though the most material Words are there left out.

V. 'Tis

V. 'Tis agreed and confeſt by this Author, *pag.* 75. That there ought to be a diſtinction made betwixt the Matter of a Law, and the manner of its Enacting, and here the Gentleman ſpeaks accurately and exactly, and diſtinguiſheth of things that are to be diſtinguiſhed. His words are theſe, *pag.* 75. *By the way, Let me deſire to be well underſtood, what I mean by ſaying this would make it a Law if it was none before, I do not mean the Proteſtation would be a Law; for a Proteſtation* Modo & Forma *cannot be a Law, but the ſubject matter of it was then Enacted.* And pag. 77. *Being approved of by Parliament, and there Enrolled, became then, and ſo continues to be the Law of the Kingdom,* (mark that) *For in thoſe times,* (here he gives you the Reaſon) *all Laws were ſo made, only the ſubſtance of the Law was agreed upon in Parliament, by King, Lords, and Commons, and entred in the Journal Book, and the Kings Juſtices did afterwards draw it up into Form, and then publiſh it to be the known ſtanding Law of the Land.* And again, *pag.* 22, 23. **Quelle Proteſtation leve en plein Parlement al inſtance & prier dudit d'Archeveſque & les autre Prelatz Suſitz, eſt Enrolle icy en Rolle du Parlement per Commandement du Roy & Aſſents des Seignerus Temporelz & Communes.** Which Proteſtation being read in full Parliament at the inſtant deſire of the Arch Biſhop and other Prelates aforeſaid, is entered upon the Parliament Roll by the Kings Command with the aſſent of the Lords Temporal and Commons, which is all the Formality of Paſſing Laws in Parliament, that was uſed in thoſe times, which was only to have it entered in the Roll or Journal Book, that ſuch a thing was agreed upon by the King and the two Houſes, then it was drawn into Form of a Law afterwards by the Juſtices and Kings Councel when the Parliament was riſen, ſo as whatever was the Law before, if it was only Canon Law, it is now come to be the Law and Rule of Parliament, and the Law of the *Land* but in truth it was ſo before, and was always ſo. Here I ſhall obſerve three things confeſt and owned by the Author, which afterwards when I come to ſpeak to the particular Caſes of his Book, I ſhall have occaſion to make uſe of.

1. That the matter of this Proteſtation was a *Law*, and indeed and in truth, the very *Law* of the ſaid Parliament both before and after this Parliament, the 11 *Ric.* 2.

2. That he accurately diſtinguiſheth of the Subject matter of a *Law*, or to uſe his own Words, and the *Modus & Forma* of its enacting; and herein he doth well; for that otherwiſe a *Law* or Judgment of Parliament being Repealed, a Perſon might Illogically draw an Argument from its ſubject matter being Repealed, to the Repealing even of the manner and circumſtances under which it did Paſs, and ſo ſubvert the conſtitution of Parliament it ſelf: as for Example, The Parliament held at *Coventry* under *Hen.* 6. *Ann. Reg.* 38. was Repealed in the 39th of the ſaid King, wherein *Richard* Duke of *York*, the Earls of *Warwick* and *Salisbury*, and *Northumberland*, &c. and others, who were in the Battles of St. *Albans*, *Bloreheath* and *Ludlow* were all attainted and Condemned for Treaſon, and their *Lands* in Fee and Tail Forfeited.

This

This Parliament I ſay was Repealed in the following Parliament, but for that thoſe of the Houſe of *York* and their Abbettors, Eſtates and Lives were at ſtake, if it had not been ſo Repealed; this was the true Reaſon of it, not the manner of the paſſing of that Law which was in the uſual Form and Manner; as other Laws were formerly paſſed in Parliaments, in like manner in the 3d of *Hen.* 5. *Richard* Earl of *Cambridge* (of whoſe Tryal I ſhall afterwards ſpeak) was in a Parliament of that Year Condemned for Treaſon, which Judgment was afterwards Repealed. I ſuppoſe if I ſhould ſay this Judgment was Repealed, as indeed it was, *Ann.* 1. *Edw.* 4. made utterly void and evacuated, he would not ſay that it was done for the Form of Judgment paſſed on him by the Duke of *Clarence* and other Peers, Earls and Barons at *Southhampton*, for the Form of Paſſing that Judgement was very Regular and Parliamentary, in regard, as he ſaith, the Lords Spiritual were not there, the Gentleman would deny utterly, and ſay, *twas according to the Law and uſage of Parliament*, for that only Temporal Lords have to do in thoſe Judgments, but it was onely for the Subject matter of the Judgment that it was Reverſed for that he was a *Yorkiſt* and *eatenus* [for that reaſon only] not that there was any thing irregular in the Form of Proceeding againſt him. Theſe things then laid down as things agreed on by both ſides, I ſhall make uſe of them in the ſubſequent Diſcourſe as Poſtulata's and Hypotheſes, things out of all queſtion, and confeſt on all hands, and ſhall in Argumentation make uſe of them as Principles in the ſubſequent diſcourſe, and I do perſwade my ſelf they will prove *Topicks*, very diſadvantageous to our Author and the Cauſe he undertakes to make good, and that if he had carefully reflected on the conſequences which do moſt naturally and moſt neceſſarily follow from ſuch Conceſſions as theſe are, that even he himſelf would have had ſufficient matter for his conviction, and that my pains and the Readers trouble, as well as this Controverſie would have been at an end.

The firſt Judgment he mentions is *p.* 6. of *Roger Mortimor* E. of *March*, *Simon Bereford*, *&c.* theſe he ſaith, *were Accuſed and Tryed in Parliament, but the Roll is ſo defaced as it cannot be read.* Well then! here is no proof how that Tryal was managed, or how theſe Malefactors were Judged, whether by the Lords Temporal only, or by both Spiritual and Temporal: But he makes it out it was by the Lords Temporal only, from the 28 of *Edw.* 3. where *Roger Wigmore* Couſin to that Earl *March* deſires that that **Attainder** may be Examined, and that by the whole Proceedings there repeated (he ſaith) *it appears none of the Prelates were Preſent.* I Anſwer 1. this he ſaith, (and if he ſay truth, he hath ſaid juſt nothing to the Purpoſe) *was an Attainder*, *pag.* 6. And if an Attainder, then from the Second Principle by me laid down, and by him granted, *pag.* 118. *The Biſhops either were or ſhould have been preſent at it*; and if ſo, it is no Precedent to prove the thing this Author brought it for; for that it proves the quite contrary, that Biſhops are to Act in Capital Cauſes in Parliament, in regard it being as he ſaith an *Attainder at which the Biſhops ſhould be preſent*, as he confeſſeth, *pag.* 104.

2. And if they were not preſent in this Attainder, it ſeems they looked

upon it as no Diminution of their Rights being their own voluntary Act, and this Author doth not argue that they looſe their Right, for he ſaith *it ſtill remains to them in Attainders reſerved intire*, and if they were not preſent at this Attainder, and yet loſt none of their Rights by their abſence, why may they not as at other times withdraw when they pleaſe from the Judicature of Parliament, and yet without any Diminution to their Rights.

3. As to his reaſons he brings to prove the Biſhops were not preſent, they are weak and unconcluding; for he ſaith, *That Biſhops cannot be underſtood to be comprehended under the word* Peers, *ſince the Barons are named firſt in the Record*, **Les queux Countes Barons & Pieres**. For that I find the contrary, **Pieres** many times put before Barons, particularly in Mr. *Seldens Baronage*, *pag.* 12. *ex Rot. Parliamenti* 4 *Ed.* 3. *memb.* 3. thus [the very ſame Parliament wherein this Tryal was] *Witneſs the Peers, Earls, and Barons aſſembled in this Parliament, &c.* **That** John Mautravers **is guilty of the Death of** Edmund **Earl of** Kent, **the uncle of our Lord the King that now is, as he that Traiterouſly and Falſely compaſſed the Death of the ſaid Earl**, &c. **for which the ſaid Peers of the Land, and Judges of the Parliament, Adjudge and Award, That the ſaid** John **be Drawn, Hang'd and Quartered as a Traitor**, &c. And for what he ſaith in the laſt place, *That they cannot be comprehended under the word* Peers, *becauſe they cannot pretend to be* Peers *of the Realm*. I do aver the contrary to be true for I find it 3 ſeveral times in the 11 of *Rich.* 2. particularly in the Proteſtation which this Gentleman confeſſeth is a perfect and compleat Act of Parliament, *pag.* 74. **ut pares Regni predicti perſonaliter.** And again, **ut pares regni predicti more ſolito intereſſe.** *And* afterwards, **Jure paritatis noſtre & cujuſlibet eorum intereſſendi in omnibus, &c. ſemper ſalvo. We proteſt we may be preſent**, ſay they, (See the Proteſtation before at large, and faithfully Recited without the Omiſſion of any thing) **as Peers of the ſaid Kingdom, be Perſonally preſent in all Parliaments whatſoever, and there Conſult of, Ordain, Conſtitute and Determine of all Affairs of the Kingdom, and of all others there uſually treated of, together with the reſt of the Peers of** England, &c. Again, **We Proteſt, both publickly and expreſly, that we intend to be, and every one of us will be Preſent in this Parliament, as Peers of the ſaid Kingdom in the uſual manner, to Conſider of, Treat of, and Ordain, &c.** And laſtly, ſay they (*in this confeſt Law and, compleat* Law, for ſo the Author calls it) *pag.* 74. **We Proteſt that we will not be preſent in the preſent Parliament [while matters of Blood] are Treated of, but will abſent our ſelves, the Right of our Peerage, and of every one of us being preſent in the ſaid Parliament, and our Right of doing all and every thing in the ſaid Parliament in all things to us being kept entire.** But theſe inſtances I give our Author as a few Prælibamina or foretaſts of what I intend (God willing) to make out fully to him and the whole World, That the Lords Spiritual are Peers of the Realm, which is the thing he here and elſewhere utterly denies; the thing ſhall be made out in its proper place. Having diſpatcht the Caſe of *Mortimer*, we ſhall proceed according to our Author, to the next Parliament of the 5th of *Edw.* 3. but in regard he hath not made good his Word, *pag.* 5. where he ſaith *He will run through all the Tryals on Record in the Tower*: and for that he hath left out four others in the ſame Parliament, (*viz.*) 4. *Edw.* 3. I ſhall ſubjoyn them, and I do perſwade my ſelf the Reader will ſee the Reaſon why our Author

omitted

omitted those Tryals, for that they make against him, and do plainly shew that the Bishops according to his own Observation were present at those Tryals; the first is that of *Mautravers*, 4 *Edw.* 3. *n.* 3. **Trestouz les Pieres Counts & Barons Assemblez a cest Parlement a Westminster si ont examine estraitement & sur ce son assentuz & accordez que** Johan Mautravers **si est cupable de la mort Esmon Count de Kent le Uncle nostre Seigneur le Roy, quoz est que principaument, Traiterousment, & fausament la morte le dit. Counte compalla, &c. pur quos lesditz Pieres de la terre & Judges du Parlement Ajuggent & agardent que le dit** Johan **soit Treyne, pendu & decolle come Treytre.** *The whole Peers Counts and Barons assembled in this Parliament having straitly examined,* &c. *do Assent and Agree that* John Mautravers *is guilty of the Death of* Edmund *Earl of* Kent, *the Uncle of our Lord the King, for that he did Principally, Traiterously and Falsely compass the Death of the said Earl,* &c. *upon which the said Peers of the Realm and Judges of Parliament do Adjudge and Award that the said* John *be drawn, hang'd, and beheaded as a Traitor.* The Persons here who are expresly called **Peers** of the Land, and Judges of the **Parliament**, are the Peers, Earls and Barons as at the beginning of the Record: Now our Author saith, *pag.* 7. *That where Peers are named before Earls and Barons, there the Bishops may be comprised* (I use his own Words) *under the name of Peers.* And if so then the Bishops were here present, and are **Peers** of the Land and Judges of **Parliament** which is the thing in question, and which he utterly denies; and indeed to any person who is versed in the perusal of Records it is plain, that the word **Peers** being placed before the Earls and Barons it doth ever comprehend the Lords Spiritual, who always (according to the Piety of our Ancestors) are placed first in rank and order.

The second is the case of *Boges de* Boyons, and *John Deverell*, *Rot. Parlement*, 4 *Edw.* 3. where by the same Persons, and for the Cause aforesaid, the same Judgment is pronounced against the said *Boges de* Boyons, and *John Deverell*, the Words of the *Record* are, **Estre ce autiel Judgment est accordz que soit fait de** Boges de Boyons, **&** Johan Deverell **per la caute suisdite, &c.** *It is agreed that the same Judgment be given against* Boges de Boyons, *and* John Deverel *for the Reason aforesaid.*

The third Case is of *Thomas de la Gurnay* and *William Ocle*, for Murdering King *Edw.* the 2. the words of the *Record* are [the same Persons as before Judges] **Item a tien Judgment est assentuz & accordez de** Thomas de Gurnay **&** VWilliam de Ocle **pur la mort le Roy Edward piere nostre Seigneur le Roy, quoz est que fausement, et traitrerousment lui murderrunt, &c.** *Moreover it is Assented and Agreed that the same Judgment be given against* Thomas de la Gournay *and* William Ocle *for the Death of* Edward *the King, the Father of our Lord the King, whom they Falsely and Traiterously Murdered.*

The Fourth and last Case is of Sir *Thomas Berkley*, where the Judges are still the same, and the *Record runs thus*, *Rot. Parl.* 4. *Edw.* 3. Thomas de la Berkley **miles venit coram Domino rege in pleno Parliamento suo & allocutus de hoc quod cum dominus Edwardus nuper Rex Anglie pater Domini Regis nunc in custodia ipsius Thome & cujusdam Johannis Mautravers nuper extitit libe eadus ad salvo custodiendum castro ipsius Thome apud Berkley in Comitatu Glouc. & in eodem castro in custodia ipsorum Thome & Johannis murdratus est & interfectus.** Thomas Berkley *Knight came before the King in his full*

full Parliament, and being charged, that whereas Edward *late King of* England *the Father of Edward now King was delivered into the cuſtody of the ſaid* Thomas Berkley *and* John Mautravers *to be ſafely by them kept in the Caſtle of the ſaid* Thomas *in the County of* Gloceſter, *and yet was murdered and ſlain in the ſaid Caſtle*, &c. What I here would have the Reader take notice of is this, That what was here done was in **pleno Parliamento** in full Parliament, and therefore all the three Eſtates, Lords Spiritual, Temporal, and Commons were preſent; for that I ſhall afterwards have occaſion to make uſe of this inſtance, which the Reader may remember that what is ſaid to be done **en plein Parlement** *or full Parliament*, there the whole three Eſtates are ever ſuppoſed to be preſent.

In the next place we come to the Parliament of the 5th of *Edward* the 3d. which was declared to be called for the redreſs of the breach of the Laws, and of the Peace of the Kingdom, where our Author is very ſubtle in his obſervation on that Parliament; for that the Biſhops were of Opinion, that it did not **properly belong to them to be Conſervators of the Peace** (the Words in the Record are **Gardeins le meſme le Comte**) and therefore they deſired to be excuſed, for they were not ſo able ro adviſe the King in Affairs of that nature, as the other the **Grantz** the *Grandees* were. the words are **quil ne attenoit a la Prelatz pas properment a eux de Conſeleir du guard de la Pees.** *It did not properly belong to the Biſhops to give the King Counſel for the keeping of the Peace of his Kingdoms.* Indeed had they ſaid it did not at all belong to them to do it, it had been ſomewhat to the purpoſe; but ſaying only they were not ſo proper Judges. I believe this Gentleman hath not at all been fortunate in the choice of this Topick to draw his Argument from, againſt the Biſhops; for that I find in the Parliament of the 7 of *Rich.* 2. the Commons to have been asked advice by the King concerning the makeing a Peace with *France*, that they then ſaid, **That it beſeemed them not to intermeddle with their Counſel therein, and theretore referred the whole Order thereof to the King and his Counſel,** *& tit.* 17. being farther urged, they ſaid **They deſired an honourable Peace for the King, but for that in the Articles were contained many terms of the Civil Law which they underſtood not, &c. they knew not what to ſay, &c.** If this Author ſhould hence argue, that for that the Houſe of Commons, did then decline to give the King Advice as to Peace or War, they are not now to do it. I profeſs that I muſt deny his conſequence, and deſire his proof of it; for that I know it to be their Right to advice the King, **de Arduis Regni, &c.**

2. I deſire the Author to take notice the Biſhop of *London* was then Chancellour, through whoſe hands the Commiſſions for the keeping of the Peace did then paſs, and it can hardly be imagined that he was not conſulted in this matter. *See Cott. Abr.* 5 *Edw.* 3. *tit.* 3.

3. Our Author ſaith, *That the Biſhops cannot be comprehended under the word* **Grantz**, and I muſt aver the contrary, for that the word **Grantz** is any Member of the Houſe of Peers in oppoſition to the Houſe of Commons. See for this, *Cott. Abr. p.* 65. *Kings Anſwer.* **It ſeemeth good to the Counſel**

to

to be done if it pleaſe the King by aſſent de Grantz to command the Commons being then before him in Parliament to adviſe him what they think beſt to be done in this caſe, wherein the Commons did declare their adviſe to the King and Grantz by a Bill in ſome following, (viz.) De Aviſera ſua la &c. Here 'tis plain that the Grantz are in general the Houſe of Peers, which I do the more deſire the reader to take notice of for that our Author hath unhappily ſtumbled and fell upon this Stone more than once in his Book as I ſhall make hereafter to appear.

In the ſame Parliament there hapned a quarrel in the preſence of the King betwixt Sir *John Gray* and Sir *William de la Zouch*, and that Sir *John* had **Mis mein au Coteil** *laid his Hand upon his Sword*, whereupon they were both committed to priſon, and the King did by the Mouth of Sir *Geffrey Scrope* **toutz lez Countes, Barons & autre Grantz en les foies & ligeanzes chargea &c.** *Charged all the Earls, Barons and other great ones in their faith and alleageances which they owe him, to give him Counſel what he ought to do upon ſuch a* **Grand** *exceſs, great exorbitancy committed in his preſence.* Which they did by the acquitting of *Zouch* and the commitment of *Gray*. Here our Author ſaith, *There were no Biſhops put to judge ſo much as of a battery.* I do confeſs they are not expreſly named, but here are words that may include them; and if they were not preſent I cannot help it, and if they had been pleaſed to have interpoſed in it, I do think they had not been very fit Judges in ſuch matters of affrays, aſſaults and batteries, which verily I think was the reaſon (if they were not then preſent) of their (ſo as is ſuppoſed) abſenting themſelves.

The next Parliament that was held (or taken notice of by our Author) was that of the 25 *Edw.* 3. where are enroll'd the Proceſs and Judgment againſt Sir *William Thorp* chief Juſtice for bribery, which our Author ſaith was **devant les Grantz de Parlement pur ſaver ent lour avys & examine ſur ceo chescun apres autre ſi ſembla a eux toutz, &c.** and afterwards in the Roll of Parliament it is, **Sur ceo il fuit accords par le Grantz de meſme le Parlement, que ſi al autre tiel Caſ. aveigne que noſtre Seigneur le Roi preigne lui des Grantz que lui plaitra pur per lour bon avis faire ceo que pleiſe a ſa Roiale Seigneurie.** This judgment, our Author ſaith, was brought before *The great Men of Parliament, to have their advice upon it, and being all examined one after another, it ſeem to them all that they were juſt. Upon which it was agreed by thoſe* **Grantz** *or grandees of Parliament that if any ſuch caſe ſhould happen, our Lord the King might take any one of thoſe* **Grantz** *of Parliament whom he ſhould pleaſe to do by their advice what he ſhould think fit.* Upon which paſſages in the Record our Author draws this concluſion, *That it cannot be underſtood that any Biſhops were here under the name of* **Grantz** *with whom the King ſhould adviſe. For this could be no employment for Biſhops, being to give judgment of Death.* Which is the very matter in queſtion. In good ſerious earneſt is not this, *Petere principium, to beg what you are to prove?* I ſhall ſay nothing more to it, but only remind our Author of what is proved in my remarks on the Parlia-

ment of the 5th of *Edw.* 3. that the word Giantz is the Peers House in oppoſition to the Commons, and to ſave my ſelf the trouble of repeating the ſame thing twice over, I refer him to conſider of what is (I think) clearly proved; but beſides I ſhall give our Author an inſtance of a parallel caſe to this, which as one Article thereof mentioneth was for bribery, it is the caſe of *M. de la Pole* Lord Chancellor of *England*, accuſed by the Commons for miſdemeanors (as himſelf confeſſeth) *pag.* 18. **devant le Roi, Prelatz & Seigneurs.** Where note, though he calls them miſdemeanors, the Commons who were accuſers ſay and avouch the cauſe to be Capital, nay paralel it to this very caſe whereof I am ſpeaking, the Replication of the Commons is this. *And as to the Anſwer of the fifth Article the Commons prayed again, propoſing the Example of one* William Thorp *(the very inſtance now ſpoken of) late chief Juſtice of the Kings Bench, who ſurmiſing that he took* 201. *of one party who had an Office in plea before him, and for that he ſold the Law,* **for which cauſe he was judged to Death, and forfeiture of his Lands and Chattels, and ſay in ſo much as the ſaid Chancellor took a** 100 l. &c. *of the ſaid proviſion there commanded to be delivered out of the Kings own profits, which he ought to have done according to the command of the King freely, without taking any thing,* **it ſeemeth to them that he hath ſold the Law and prayen Judgment.** Here we find the Lord Chancellor of *England* accuſed for taking bribes and ſelling the Law, and the Commons inſiſting on and paralleling theſe two caſes and therefore Capital, and yet all this ſaid, nay, it was done; as before **devant le Roi, Prelatz & Seigneurs**, *before the King, Prelats, and Lords.* Which is the thing in queſtion. See the Commons replication in Mr. *Selden's* Baronage, *pag.* 94.

In the 42 of *Edw.* 3d. Sir *John Lee* Steward of the King's Houſe, was accuſed of miſdemeanors; and the Record ſaith, **Et apres manger vindrent les Prelats, Ducs, Counts, Barons & aſcuns de Commones & illoeques fuit fait venir Mr. John Lee,** &c. *after meat came the Prelates, Dukes, Earls, Barons, and ſome Commoners, and Sir* John Lee *was fetcht thither.* At the Trial if any thing had been objected which had been Capital the Biſhops were preſent at it.

In the Parliament of the 50th of *Edw.* 3d. we find ſeveral perſons accuſed of very great Crimes, and ſome of which were in others Capital, as in the caſe of *Gomenitz* and *Weſton*, in 1 *Ric.* 2. the Perſons accuſed were *Richard Lyons* farmer of the Cuſtoms, *For that he had impoſed and procured to be put upon Wool, Skins, Leather, and other Merchandizes, certain new Impoſitions without aſſent of Parliament, without permiſſion of the King, or of the high Treaſurer of the Realm, having not medlage therewith*; and of other great Crimes mentioned in this accuſation. The ſecond perſon was the Lord *Latimer*, *who was accuſed for the loſs of the Town and Fort of Saint* Saviours *in* Normandy, *while he was Captain there, and of the Town of* Brotherel *in* Brittain, *and of other Towns and Forts; likewiſe of ſundry other great Extortions in* Brittain, *and that he had been partaker of all the evils of* Richard Lyons. *Vide* Cott. *Abr. pag.* 122. The other perſons were *William Ellis* of great *Yarmouth*, as acceſſory to *Richard*

Lyons

Lyons aforeſaid, and *John Peach* for getting to himſelf a Monopoly of ſweet Wines, and the Lord *John Nevil* for buying Debts due to the King at undervalue; and for defrauding the King for Souldiers wages, &c. at all which Trials our Author confeſſeth that the Biſhops were preſent. The Crimes were great and hainous, *as raiſing money without Parliament, loſs of Forts, a Crime Capital in* Gomenitz *and* Weſton; notorious oppreſſion of the Subjects, and cheating of the King; theſe I preſume are greater Crimes than a brable in the King's preſence, yet at which our Author cannot allow the Biſhops any Vote in the Judicatory. Now what I here obſerve are the particulars which follow,

1. In the Trials which were of theſe Men I find a Mention of the Lords of the Parliament, which ſome would have to be meant to be the Lords Temporal only, excluding the Biſhops from that appellation, and here in the caſe of *Lyons* I find the contrary at the time of his Sentence; we ſhall find who were call'd Lords of the Parliament. *Thereupon another time the ſaid* Richard *was ſent for before the* **Lords of the Parliament** [let our Author take notice that the Biſhops were now preſent] *where it was ſaid to him that it ſeemed to the* **Lords**; our Author ſaith, *The Biſhops are never comprized under that name, and it cannot be imagined they ſhould be under the general expreſſion,* **& autres Seigneurs, Barons,** &c. *pag.* 14. *in the very next Trial of* Gomenitz *and* Weſton, which I deſire him to remember when we come to it.

2. What before I hinted, The loſs of ſundry Forts and Towns, which were Capital caſes, as to the Lord of *Gomenitz* and *Weſton*, but not thought ſo now; and yet the Lords Spiritual confeſſed (and indeed in the Record they are ſaid to be) preſent alſo. So that it is not moſt certain, what another and later Author hath ſaid in the 15. *p. That the Biſhops are never ſpoken of in any Record, but either by the name of* Archiepiſcopi, Epiſcopi, *or* Prælati, *or ſome ſuch name to diſtinguiſh them from the Laity, and if they are ſpoken of, they are ever firſt named*: So that that diſcourſer may find them named here in a general word, **Seigneurs du Parlements**, and not in particular diſtinguiſhing names, as *Epiſcopi, Prælati*, &c. but of that Author and his Book more hereafter.

3. That at all theſe Trials the Biſhops are ſaid by him, and ſo indeed they were, to have been preſent, and no body ſays (ſaith he) but they might: So that now the Biſhops are **Lords of Parliament**, and judging in a cauſe that might have been Capital.

But farther, that the World may no longer be amuſed and impoſed upon in this Notion of the Gentleman and the diſcourſer, *that except the Biſhops are particularly named they cannot be thought to be there.* Let our Authors ſee the Parliament Roll of the 4 of *Ric.* the 2d. in the graunt of a Subſidy, where, I hope, they will not exclude the Biſhops; the words are, **Les Seigneurs & Communes ſi ſont aſſentez**, *the Lords and Commons do agree*; and the words in the Roll, in a Capital caſe, of Sir *Ralph de Ferrers* in the ſame Parliament, are **Semblables as Seigneurs du Parlement que le dit**

Mr.

Mr. Rauf eſtoit innocent. *It ſeemed to the Lords of the Parliament, that Sir* Ralph *was innocent.* The words **Seigneurs, & Seigneurs du Parlement**, are the ſame. As in the caſe of *Lyons* where the Biſhops were preſent under the general words, **Seigneurs du Parlement**: And in the caſe of the Lord *Latimer*, where the Biſhops were preſent, 'tis ſaid, *And ſoon after the Commons having this Anſwer of ſubmiſſion, prayed the* **Lords of the Parliament**, *in the behalf of the King*: And afterwards, *and the Lords anſwered there unto, &c.* And that theſe words, *Lords of the Parliament*, are generally not particularly to be underſtood of the Lords Temporal only, will appear, plainly from the Lady *Periers* caſe, *Anno* 1 *Ric.* 2. who in that Parliament *was cauſed to come before the Prelates and Lords to Anſwer certain matters, &c.* And after the rehearſal of a judgment made againſt the ſaid *Alice Periers*, &c. *The Lord Steward ſurmiſed to the ſaid* Alice *that it ſeemed to the* **Lords of the Parliament**, *that ſhe had incurr'd the pain compriz'd in the ſaid Ordinances, and had forfeited, &c.* Where the Prelates as well as the other Lords Temporal are expreſly here called, **Seigneurs du Parliament**, which was the thing to be proved. Nay, I dare undertake to give an hundred inſtances in the like kind, for the preſent I add no more.

1 *Ric.* 2. *William de Weſton*, and *John de Gomenitz* were Tried in full Parliament, for *Num.* 38. and 39. of the Parliament 'tis thus ſaid. **Et venez & lieuz la dit cedule en plein Parlement.** *And they came and read the ſaid Schedule in full Parliament*, and before that *Num.* 29. **Quele petition lue &c. diſt fuit & commandez en ceſt Parlament per les Prelates & Seigneurs pieres du Parlement.** *Which petition was brought and commanded to be read in the Parliament by the Prelates and Lords,* **Peers of Parliament.** And afterwards on *Friday*, &c. **A quel jour de vendredy lez ditz Johan & William ameſnes per la dit Conſtable devant les Seigniours abanditz en plein Parlement.** *The ſaid* John *and* William *was brought by the ſaid Conſtable before the Lords aforeſaid in full Parliament*; and again, **Samady, &c. per quoy les Seigneurs abanditz en plein Parlement vouz ajugent a la mort.** Here I muſt confeſs it ſeems doubtful who theſe **Seigneurs abandits**, *Lords aforeſaid* were; for that *Numb.* 29. the words are, *the Prelates, and Lords; Peers of Parliament*; and *Numb.* 38. and 39. *the Schedule was brought into the full Parliament*; and that upon *Friday the priſoners were brought before the Lords aforeſaid, in full Parliament*; and there was named the Duke of *Lanc.* and ſeveral Earls and Lords, **& pluſours autres Seigneurs, Barons & Bannerets**; *Many other Lords, Barons and Bannerets, &c.* and on *Saturday* they are ſaid to come before *the Lords aforeſaid again, and that too in full* **Parliament**, *where they were adjudged to dye.* I ſay, to me it ſeems doubtful (others perhaps may be of another opinion) who theſe *Lords aforeſaid were*, whether the Prelates, as *Numb.* 29. *when they and the others commanded it to be read, &c.* or the Lords particularly named; and **pluſaurs autres Seigneurs** under which very probably the Lords Spiritual might be comprized; I ſay, who theſe Lords aforeſaid were, it is not clear from the Roll of Parliament.

1. Becauſe it is no where ſaid the Biſhops did withdraw.
2. The judgment and anſwer of the priſoners was given in **full Parliament**,

ment, and when ſo a thing is done I think all the Eſtates muſt be preſent.

3. The Prelates, as in the caſes foregoing, may be and are frequently comprized under theſe common words **Seigneurs**, or *Lords*; and I am not yet ſatisfied that the Biſhops are ever named firſt in order, eſpecially in ſuch caſes as theſe whereof we now treat, and at which they were not frequently, and I am perſuaded do not now deſire (if their juſt Rights may be preſerved and kept intire to them and their Succeſſors) to be preſent; and I am in this point much of this Gentlemans mind, when he ſaith, *pag.* 105. *I do not think it any part or degree of Honour to judge Men to Death, it is certainly an employment which in my opinion no body will envy to any that hath a right to it.*

The caſe enſuing next on the Roll is that of the Lady *Alice Perers*, who as Sir *Robert Cotton* ſaith, was brought before the Lords; but as the Roll of Parliament hath, **fait venire devant les Prelates, & les Seigneurs du Parlament pour y reſpondre, &c.** *She was made to come before the Prelates and Lords of the Parliament to anſwer, &c.* where you ſee he makes no diſtinction 'twixt *Prelates, and Lords of Parliament.* Her crime was that ſhe contrary to an Act made in the 50 *Ed.* 3. being there expreſly prohibited, had proſecuted Suits in the King's Courts, &c. and particularly in the caſe of *Richard Lyons*; hereupon the Ordinance was cauſed to be rehearced by Sir *Richard Scrope*, by the Order of the Prelates and Lords, in the preſence of the ſaid *Alice*, ſhe was adjudged to be baniſhed and to forfeit her eſtate; of what ever extent her crime might have been (for by the by 'tis not, nor can always be known, either to its nature or hainouſneſs, before Trial; and ſo the Biſhops were frequently, as is moſt probable, preſent at ſuch debates) however here they were confeſſedly preſent.

3 *Ric.* 2. The Merchants had killed *John Imperial* a publick Miniſter, this was a great affront and diſgrace to the King and Nation; hereupon complaint being made to the Parliament, *an Act was drawn by the Judges in the King's preſence, and of the Lords Temporal.* **En preſence du Roy, & des Seigneurs Temporels en le Parlement.** Well what then! Why they were not preſent when the Judges were preparing it; grant they were not, was it paſs'd without them? This argues againſt the Biſhops legiſlative power, which this Author grants in ſeveral places of his Book, *pag.* 104. and 118. &c. but now he ſeems to forget himſelf.

4. *Ric.* 2. Sir *Ralph Ferrers* Knight, was Arreſted by the Duke of *Lancaſter*, on the Marches of *Scotland*, for ſuſpition of Treaſon, for that he held intelligence with the French, the King's enemies, and had wrote divers Letters of correſpondence herein with the Earl of *Longovile*, the Lord *Cliſſon*, and others; upon which the matter is brought into Parliament, where he was (as our Author and the Record ſaith the ſame too) acquitted. **Sembles ley Seigneurs du Parlement que le dit Mr. Raut eſtoit innocent.** *It ſeemed to the Lords of the Parliament that Sir* Ralph *was innocent.* Here our Author ſaith, *Can any Man think the Biſhops were there, and*

comprized under the general expreſsion of **les Seigneurs du Parlement,** *Lords of Parliament* ? I anſwer, yes very well, they were called *Lords of Parliament*, as before in the Trials of *Richard Lyons*, and Lord *Latimer*; For 'tis expreſly ſaid, *That* Lyons *being ſent for before the Lords of the Parliament,* **Seigneurs du Parlement,** *it was then ſaid to him, that it ſeemed to the* **Seigneurs,** *Lords, that his offences were ſo great and horrible, that he had not ſufficient wherewith to make ſatisfaction, &c.* But you may ſee, to avoid repetition, the Biſhops before in thoſe caſes before mentioned, proved in ſundry Records, to have been called *Lords of Parliament*, whither I remit the Reader; only minding our Author that if he had conſulted the very Record of Parliament, out of which this Trial is taken, he would have there found the word **Seigneurs** to include both Eſtates, and that in the grant of a Subſidy. **Les Seigneurs & Communes ſi ſont aſſentues, &c.** *The Lords and Commons do aſſent, &c.* Except he will exclude the Biſhops from voting in the granting Subſidies, which I hope he will not do. The ſame proved, 1 *H.* 4. *n.* 5. *Henry de Percy* Earl of *Northumberland* and Conſtable of *England*, demanded of the Lords and Commons whether they did agree to the continuance of the *Parliament*; &c. the 17 *Ed.* 4. *n.* 1. and in infinite other places, except this Gentleman will ſay, which is indeed to beg the queſtion, that they are Lords in all other things but not in the Judicatory of Parliament? If ſo, I refer to *Mautraverſes's* caſe where the word **Peers** muſt expreſs ſome noble Men or other, there were no Dukes preſent, and **Counts** and **Barons** comprize the Lords Temporal; what then can Peers, who are there and in the three following caſes, **Juges du Parlement,** comprize except the Biſhops? So that even in Capital caſes the Biſhops were preſent of neceſſity, for the word **Peers** is expreſſive of ſomewhat; and if you peruſe the Catalogue of the *Lords* ſummon'd to Parliament, 4 *Ed.* 3. you will not find one *Duke*, for the firſt of the Temporals is *Thomas* Earl of *Norfolk*, by his place *Marſhal* of *England*, and then *John* Earl of *Cumberland* the King's Brother, and it is cloſed by *John de Sherleton*, and *Barthol de Burgherſhe* Warden of the Cinque Ports.

The next caſe is that of the Biſhop of *Norwich*, for his ill management of an expedition undertaken by him into *France*, 7 *Ric.* 2. ſundry miſdemeanors are charged upon him, as the miſpending the King's Treaſure by them received, and that an account might be given of it, and the reſidue if any employed to the King's uſe; the Biſhop proteſting earneſtly his innocency herein, deſires his Trial, and that he might openly give an account in Parliament before the Lords of that undertaking, where he fully purgeth and acquitteth himſelf; but at laſt another charge of 10000 Franks of Gold for the delivery of *Grave*, is charged on him, of which yet he did very well acquit himſelf. And at laſt what I deſire may be taken notice of, that for theſe his miſdemeanors he was adjudged to make fine and ranſom to the King, and to have his Temporalties ſeized, and that the Judgment was paſſed on him by the *Lords*, by **aſſent of the Parliament,** where I hope the Author will not deny but that there were Biſhops preſent. See *Cott.* Abr. 7 *Ric.* 2. *Numb.* 23. *Rot.*

Rot. Parliamenti 10 *Ric.* 2. *m.* 4. *&* 5. In this Parliament all the Commons *with one accord, and in one aſſembly, came before the King, Prelates and Lords,* **devant le Roy, Prelats & Seigneurs**, complaining grievouſly of *Michael de la Poole* Chancellor of *England*, accuſing him by ſeveral Articles, and amongſt the reſt I find an accuſation expreſly inſiſted on by the Commons againſt the Chancellor for bribery, and they parallel his Caſe with that of *Thorp* chief Juſtice, before mentioned, and prayed Judgment againſt him according to the Condemnation of the ſaid *Thorp*, which was for a crime Capital. In manner following, *And to the anſwer of the fifth Article, the Commons prayed again, propoſing the example of one* Will. Thorp *late chief Juſtice of the King's Bench, ſurmiſing that he took* 20 l. *of one party who had an Office in plea before him, and for that he ſold the Law,* **for which cauſe he was Judged to Death, and forfeiture of his Lands and Chattels,** *and ſay in ſo much as the ſaid Earl was ſo Chancellor, and took an* 100 l. *&c. of the ſaid proviſion there provided to be delivered out of the King's Hands of his profits, which he ought to have done according to the Command of the King, freely without taking any thing, it ſeemeth to them that he hath ſold the Law, and prayen Judgment.* The Biſhops here are expreſly ſaid to be preſent, which our Author confeſſeth, and yet the crime Capital; and not the leaſt mention made in the Roll of their withdrawing as our Author ſurmiſeth they ought to have done in caſes of that nature.

Now at laſt we come to the main of our Controverſie, *viz.* the Parliament of the 11 of *Ric.* 2. where the five Lords appellants, the Duke of *Glouceſter*, Earls of *Derby*, *Arundel*, *Worceſter*, and Earl *Marſhal*, made their open and ſolemn proteſtations, that what they now undertook touching their appeals, was for the honour of God, ſafety of the King, and Realm, and their own Lives. Hereupon the Archbiſhop of *Canterbury*, and all the Biſhops of his Province, made their proteſtation likewiſe openly and ſolemnly, and the Biſhops of *Durham* and *Caerliſle* did the like afterwards. **Quelle protestation leue en plein Parlement al inſtance & priер dudit d' Archeveſque, & les autres Prelats ſusditz eſt enrolle en Rolle du Parlement per Commandemant du Roy & aſſentz de Seigneurs Temporels & Communes.** *Which proteſtation being read in full Parliament, at the inſtant deſire of the Archbiſhop and other the Prelates aforeſaid, was entered upon the Roll of Parliament* [not journal only of the Houſe of Lords] **by the Commandment of the King and the Aſſent of the Lords Temporal and Commons.** *Which is all the formality of paſſing Laws in Parliament*, as our Author ſaith, *pag.* 23. *which was uſed in thoſe times, which was only to have it entered upon the Roll, that ſuch a thing was agreed upon by the King and the two Houſes, then it was drawn into the form of a Law, afterwards by the Juſtices and King's Councel when the Parliament was riſen.* And to this opinion of our Author doth Mr. *Prinn* in his Preface to Sir *Robert Cottons* Abridgment, and I think every body elſe agree, his words are, *The Rolls of the Parliament were engroſſed and made up by the Clark of the Parliament, with the aſſiſtance or ſupervi ſing of the Lords and Judges and Commons too when there was occaſion.* Now our Author goes on,

pag.

pag. 23. as above. *So whatever was the Law before, it is now come to be the Law and Rule of Parliament and the Law of the Land.* **But in truth** (ſaith he) **it was ſo before, and was always ſo.** This is the *Cardo Controverſiæ*, the hinge on which this Debate turns. Now what this Law is, you may ſee it fully and faithfully ſet down and compared with the Parliament Roll in the Records in the Tower, which is a thing which never yet hath been done neither by this Author, nor a later who it ſeems hath wrote after the ſame Copy [but of him more afterwards] if it had been this Controverſie had been at an end. *It is in pag.* 7,8,9.

For firſt, the former of theſe Authors doth confeſs the whole truth, that it is a formal and eſſential Act of Parliament, but the later is neither in this nor in other matters half ſo ingenious; for he, *page* 24. *Of his diſcourſe of the* Peerage, *&c.* will not acknowledge it any more than a naked *proteſtation*, and that in it ſelf is no argument of right, neither doth the permiſſion or allowance of any proteſtation yield that right which the Proteſtor is deſirous to ſave, but is only (as he ſaith in his *Gothick Language*) an *Eſtopel*, in plain Engliſh, a hindrance of the concluding any matter. But pray (good Sir) was this only an Act of the Houſe of Peers? Was it not done by the aſſent of the Houſe of Commons, and the King's command? Which is uſually **Le Roy le veult**, nay did not the Clerk of the Parliament, Judges, King's Councel, &c. enter it accordingly [not only as a meer formal proteſtation in the Houſe of Lords Journal] but in **the Roll of Parliament it ſelf**, where all other Acts (but no proteſtations) are entred, let the diſcourſer, if he can, give us an inſtance of any thing that was not a conſeſt Law, that ever did in ſo ſolemn a manner paſs the King and both Houſes aſſent; and beſides let him read the Parliament Rolls in the Tower (to which I find him utterly a ſtranger as ſhall afterwards appear ſo, that *he that runs may read him*) and I promiſe my ſelf he will then find himſelf miſtaken, and that Mr. *Prinn* ſaid right as before. *That the Judges, King's Councel, and Clerk of the Parliament, engroſſed and made up the Rolls of Parliament, as before, &c.* And that formal proteſtations never paſſing the King and two Houſes were never put into the Parliament Roll. Let this diſcourſer reflect upon his own inſtance of the Bill againſt proviſors, under *Ric.* 2. doth he find though the Clergy, as he ſaith, oppoſed this Bill, their proteſtation in the Roll enter'd by the command of the King and the aſſent of the two Houſes of Parliament, I trow not. And ſo much for the preſent of him, who I hope before his next attempt will learn to diſtinguiſh between a Journal Book, and a Parliament Roll.

But to put the matter out of all queſtion, and for this laſt Authors fuller information, he may know the very laſt time the late learned Lord chief Juſtice *Hales* did ſit on the Bench, there was a *Nullum tale Recordum* pleaded; and the Defendent ſaid the matter pleaded to be an Act of Parliament, was only a Petition, (for all Laws which began in the Commons Houſe, as Sir *Edw. Coke* obſerves were ſo drawn) and that it had not

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the Kings **expreſs Command**, his **le Roy le veult**, which yet is here; and therefore the Defendants Counſel thought and inſiſted upon it alſo that it was no Act of Parliament. But the Lord Chief Juſtice overruled their Plea, and ſaid, *It was a good Act of Parliament, for it was enroll'd in the Parliament Roll, and certified by the Clerk of the Parliament upon Oath into the Chancery, as an Act of Parliament, and therefore ſo it was to be held; elſe all the Rolls of Parliament, on Record either in the Chancery or the Tower might be queſtioned, as they ought not (if the Rolls had not been ſuch as they pretended) to be held in that veneration which they are, neither ought the Maſter of the Rolls any longer to be ſtiled,* Sacrorum Scriniorum Magiſter.

In the next place let us come to the conſideration of what is here granted and proved to be a Law.

And II. It is granted *that by the Law and cuſtom of* England, **De jure & conſuetudine regni Anglie**, *That it doth belong to the Archbiſhop of* Canterbury, *for the time being, and all other his Suffragans, Brethren and fellow Biſhops, Abbots and Priors, and all other Prelates whatſoever, who hold by Barony of our Lord the King, to be perſonally preſent* **in all Parliaments whatſoever, as Peers of the Kingdom,** *and there to Conſult, Treat of, Ordain, Conſtitute and Determine* **of the Affairs of the Kingdom, and other things there uſually Treated of, together with the reſt of the Peers of the ſaid Kingdom,** *and others having intereſt there.* **And to do all other things which there may happen to be done.** Here the words are ſo expreſs and full that there are five points in controverſie decided.

The firſt is, that the Biſhops by **the Law and cuſtom of England** *are to be perſonally preſent in all Parliaments whatſoever to determine of the affairs of the Kingdom and all others there uſually treated of* [I hope impeachments are ſuch as theſe now in queſtion] *together with the reſt of the Peers of the Kingdom that have intereſt there, and* **to do all other things that may there happen to be done.**

The ſecond Point is, That they are **Peers of the Kingdom** [the reaſon is given] *becauſe they hold by Barony, and therefore have right to treat of, ordain, &c. of the affairs of the Kingdom and all others there uſually treated of,* **together with the reſt of the Peers of the ſaid Kingdom.**

The third point, **That their Eſtates and order being ſaved to them intire** *they did intend and will be preſent in this preſent Parliament and all others* **as Peers of the ſaid Kingdom.**

The forth and moſt material is, where they give their reaſon why they cannot be preſent in the preſent Parliament, is *becauſe ſome matters will there be treated of in which it is not lawful for them* **according to the inſtitutions of the holy Canons or law Canonick** *to be perſonally preſent, therefore they proteſt that they intend not as* **by Law they cannot.** Now pray Gentlemen what Law is here meant, the Law of the Land, or Canon Law, is it not the Canon Law immediately preceding? It cannot be the Law of the Land ſpoken of in the beginning of the Proteſtation, for by that they ſay they can be preſent in all Parliaments, and all debates whatſoever in Parliament, and that by that Law they will be preſent in this Parliament. Pray let the Biſhops ſpeak ſence, and not be thought to contradict themſelves, certainly they knew much better; whereas

both these Authors would wrest these words of the Protestation and make it to speak contradictions, clearly against the main scope and import of it; for the reason here given why they absent themselves, is because (*such matters treating of Blood*) are debated of and **upon that account**, say they (not by the Law of the Land we cannot, for by that Law, say they, we may as before) we will absent our selves, &c. But how?

Fifthly, They will absent themselves, **The Right of their Peerage,** *and the Right of every one of them being present in the said Parliament, as to all and every thing there to be done, agreeable to their Estates and Order, in all things to every one of them saved entire.* That this is the expresse words and clear meaning of this Record and Law, for it is so acknowledged and (I think) well proved too; the former of these Authors saw, for in *pag.* 19. he saith, *That the Bishops absented themselves from Parliament, in regard such matters, (viz. impeachments) were to be there agitated but with a Salvo to their right; Which some* (saith he) *will have to be understood of a Right to be present when those matters were in agitation, but this* (saith he) *could no ways be their meaning, but they protested their having a Right to sit and Vote in Parliament upon all other occasions in the general.* No, Sir, by your favour not only so on all other occasions, *but in all things whatsoever any other Peer might Vote in.* And now I shall shew the reader what these two Authors have left out of this Protestation, and leave it with him to guess at the reasons of their so doing: All the beginning is wholly left out, which is the most material part of the Law, for *Ratio legis est anima legis, the reason of the Law is the soul of the Law* (as the Civilian saith). *Whereas by the Law and Custom of the Kingdom of* England, *It doth belong to the Archbishop of* Canterbury *for the time being, and the other his Suffragans, Brethren, and fellow Bishops, Abbots, and Priors, and all other Prelates whatsoever, who hold by Barony of our Lord the King, to be personally present in all Parliaments whatsoever, as Peers of the Kingdom, and there to Consult, Treat of, Ordain, Constitute, and Determine of the Affairs of the Kingdom and other things there usually treated of, together with the rest of the Peers of the said Kingdom, and others having interest there; and to do all other things which there may happen to be done.* Secondly, The Reason given on what account, **in ea parte,** they absented themselves left out, to make way for their interpretation of their *de Jure non possumus*, which as before is understood of the Canon Law, that they might have it understood of the Law of the Land, contrary to the expres words of the Protestation in the beginning of it; whereas the words *in ea parte* refers to matters of Blood that were then in agitation, and upon which account the Bishops declined to be present. **Jure Paritatis nostræ, & cujuslibet eorum interessendi in dicto Parliamento, quoad omnia & singula inibi exercenda nostris, & eorum cujuslibet Statui & ordini congruentia in omnibus semper salvis,** *omitted.* If these Gentlemen say, that they had occasion to expres no more of this Protestation, I must agree with them herein, for indeed as the Reader sees it is not for their turn, and makes against them and overthrows whatever they have writ; for indeed had this *confest Law* been faithfully set down, and translated into English as faithfully, all our pains had been saved,

ved, and the World not amuſed with a Controverſie, the generality of the people, ſo little underſtands.

20 *Ric.* 2. One *Thomas Haxey* Clerk, preferr'd a Bill in the Houſe of Commons for regulating the expences of the King's Houſe, complaining *that many Biſhops and their ſervants, and many Ladies likewiſe and their company, lived in the King's family and at his Charge.* This caſe is not capital, as any body may ſee, yet the King taking the matter in evil part, as he had reaſon ſo to do, and for that the Bill had it ſeems found reception in the Houſe of Commons, the King was exceedingly moved at it, and by his own mouth declared to the Lords, that it was an offence againſt him, his Dignity and Liberty, and willed the Duke of *Lancaſter* to ſay ſo much to the Speaker of the Houſe of Commons, and that he ſhould declare the name of him that ſo exhibited the Bill; and the Bill was delivered, and the name of the Exhibiter, by the Clerk of the Parliament to the Clerk of the Crown. After which the Commons came before the King, and ſhewing themſelves *heavy of chear*, and declaring that they meant no harm, they ſubmitted themſelves to the King and craved his pardon; See Sir R. Cotton's Abr. *p.* 362. Notwithſtanding which *Haxey* was Tried and Condemned as a Traitor, as to the Juſtice of it I ſay not, for 1 *H.* 4. that Judgment was repealed as erroneous, as being againſt the right and the courſe of Parliaments; and the Biſhops, I do believe, refuſed to be preſent at it; and I commend their prudence, for otherwiſe it might have reflected upon them and their order; but afterwards I find them interceeding to the King for him, for the Record ſaith (as our Author likewiſe hath it) **Fait a remembre que Weſquerds apres le Chandelure maintenant apres le Jugement rendu devers Thomas Harey que fuit ajuggez en Parlement a la mort come Traitor, &c. vindrent devant le Roy ovec grand humilite l' Archeveſque, &c.** *Be it remembred that* Wedneſday *after* Candlemaſs *day, immediately after Sentence was paſſed againſt* Thomas Haxey, *&c. the Archbiſhop of* Canterbury, *and the other Prelates, came very humbly before the King, and beſought the King to have pity and compaſſion upon the ſaid* Haxey, *and to remit his execution which the King granted.* From all which our Author collects only this, that the Biſhops was not preſent at an irregular condemnation, for ſo it is ſaid to be, 1 *H.* 4. **En countre droit & courſe que avoit eſte devant en Parlementz.** *Againſt juſtice and the courſe of Parliaments.* And if they were not preſent, he knows the old Rule, *Liceat unicuique recedere a ſuo jure. Every Man may forbear for a time to uſe his right,* if he ſees a reaſon for it, and his ſo doing doth not prejudice him, but his right remain to him ſecured upon the higheſt ſecurity, *of a confeſſed Act of Parliament*; And ſo the caſe was here, and that it was the right of the Biſhops to be preſent at ſuch judgments in Parliament it will appear, for that in the very next Parliament which comes now to be ſpoken of. I find the whole Houſe of Commons with their Speaker ſolemnly and openly before the King, in open Parliament, aſſerting the ſame, and ſaying there had been many erroneous judgments given, and they repealed for their abſence, and therefore they deſire of the King that

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they would appoint ſome to be their common Proctors, with ſufficient authority thereunto. Come we now to the Parliament which was held.

21 Ric. 2. In this Parliament *Thomas Arundel* Archbiſhop of *Canterbury* was impeached of high Treaſon, and it was deſired by the Commons that he ſhould be put into ſafe cuſtody, and becauſe it touch'd ſo great a perſon, the King anſwered he would be adviſed, however the Commons went on with their impeachment; and that what they were going about might be firm and eſtabliſh'd, and not void when it was done, for ſo they thought it would be, if the Biſhops did not give their conſents at the judgment, they prayed the King, as before, that they would appoint ſome to be their common Procurator with ſufficient authority thereunto, which they did three ſeveral times in this Parliament. The firſt time was at this impeachment of the Archbiſhop of *Canterbury* when they appointed Sir *Thomas de la Percy*, who was afterwards in this Parliament created Earl of *Worceſter*, who accordingly in their behalf when judgment was given againſt him, gave in his Suffrage with the reſt of the Lords againſt him. **Sur quoi noſtre dit Seigneur le Roy & toutz lez Seigneurs Temporals & Mr. Thomas Percy eiant poar ſufficient de la Prelatz & Clergy du Royalme de Engleterre come piert le record en le dit Parlement adjuggerent & declaverent ceſt Articles conuz per ledit Archevelque pur Traiſon.** *Upon which our Lord the King, and all the Temporal Lords, and Sir* Thomas de la Percy *being ſufficiently empowered from the Prelates and Clergy of the Kingdom of* England, *as appeareth upon record in Parliament, judged and declared this Article acknowledged by the Archbiſhop to be Treaſon, &c.* 'Tis acknowledged that the Biſhops were not here perſonally preſent, but that they were repreſented by Sir *Thomas de la Percy* their Procurator ſufficiently authoriz'd, and this ſhews (ſaith our Author) *That the Biſhops, as Biſhops and Clergy men, could not be there in their perſons.* 'Tis granted they thought they could not be there, and they give the Reaſon in the Proteſtation, in the 11 R. 2. why they could not, becauſe they were prohibited by the Cannons of the Church to be preſent; *dum de hujuſmodi materiis agetur, while matters of blood are in determination.* And that (as this Author ſaith) rather than they would be preſent, they appointed a Layman who was then no Peer, but preſently after was, to be their common proxy. Well what then, ſuppoſe they did? Why it was an unuſual thing. And ſo it is that the Biſhops who are Peers of the Land, and Barons of Parliament, ſhould not Vote, if they pleaſe to be preſent, in all affairs in Parliament, having common right with the other Peers. *But it was never done but in that Parliament.* And the Gentleman can give himſelf the reaſon why it was now done, becauſe that divers Judgments had been repealed, for that they had not been preſent by themſelves or Proctor; and that hereupon, becauſe *they the Commons would make ſure work*, they petition the King that he would cauſe the Biſhops to do it. The ſecond time it was done was when this Parliament was adjourned to *Shrewsbury*; it was there given it ſeems by Vote, only to *William le Scrope* Earl of *Wilts*, for the Roll of Parliament ſaith,

Sur

Sur ce les ditz Prelatz & Clergy nomerent & ordenerent per bouche Will. de la Scrope Conte de la Wilts commetant & donant a lui plein poar auſſi avant & en manere come feuſt comys a Mr. Thomas de la Percy, &c. *Upon which the Prelats and Clergy named and appointed in Parliament, by word of mouth,* William de la Scrope *Earl of* Wilts, *and gave him the ſame power, as full and in the ſame manner as before had been granted to Sir* Thomas de la Percy. Here the matter of fact is agreed 'twixt the Author and my ſelf, and he only notes, that it was given to *Percy* being a Commoner by Commiſſion, and unto the Earl of *Wilts* by Vote openly declared, which is not material and ſo I paſs it. The third time was in the ſame Parliament, in the buſineſs occaſioned by the quarrel of the Dukes of *Hereford* and *Norfolk*, when as our Author hath it, (the Record ſaith the ſame) the whole matter was referr'd to the King to be by him determin'd, by the advice of certain Lords and Commoners there named, and to them were joyned as the Biſhops Procurators the Earls of *Worceſter* and *Wilts*. All he hath here to object is, *that this argues a great unanimity in the voting of the Prelates.* And ſuppoſe it do, muſt they looſe their Rights becauſe they all agree in theſe two Earls to entruſt their Votes with? I hope not. Yes, but this is *unparliamentary, a thing never practiſed.* And this Gentleman knows it was done at the inſtant prayer and petition of the Houſe of Commons, *that their proceedings might be valid and not afterwards queſtioned in future Parliaments.* This they expreſly ſay themſelves, and it was done accordingly by the Biſhops at the Kings command. But now comes the great Anſwer of our Author, which like a Torrent ſweeps down all that we have ſaid at once.

Ἀσσυρίη πλατὺς μέγας ῥόος, ἀλλὰ τὰ πολλὰ
Δύματα γῆς καὶ πολὺν ἐφ' ὕδατι σύρφετον ἕλκει.

Aſſyrius magnam Euphrates vim volvit aquarum,
At multa illuvie fædaque it turbidus ulva. Callimach. Hymn. 2.

The Stream 'tis confeſſed is ſtrong and heady, but the water not ſo clear: And here I muſt put this Gentleman in mind of our fifth *Poſtulatum*, and his conceſſion which I before told him I ſhould make uſe of; 'tis in his 75. *pag.* That there ought to be a diſtinction made betwixt the matter of a Law and the manner of its enacting; the thing in queſtion betwixt this Gentleman and my ſelf was, about the manner of paſſing thoſe Laws, in the 21. of *Ric.* 2. whether they were not good Laws for that the Biſhops did not perſonally Vote there but by their Proxies; he ſaith, *their ſo voting was irregular, unparliamentary*, and what not, and that the whole Parliament it ſelf is repealed in the 1 *Hen.* 4. And no wonder if it was there repealed; this Gentleman ſaith, *that both he and the two ſubſequent Kings were Uſurpers*, and the 1 *Edw.* 4. ſaith, *the were Kings in fact and not in right*, and ſo they were; no marvel then, I ſay, if that Parliament of 21 of *Ric.* 2. was repealed by *H.* 4. for this Author very well knows that the proceedings in that

Parliament of 21 of *Ric.* 2. were juſt and lawful, being againſt thoſe Traitors who went about to depoſe their lawful Soveraign *R.* 2. and that it was in favour of them and their heirs, that that Parliament was repealed by *Hen.* 4. whom he calls an *Uſurper*, and who indeed was not lawful King, and who could do no leſs than do that act of favour, or *rather injuſtice for ſo it was*, to requite his friends who had but juſtly ſuffered for his title under their then lawful Prince and Soveraign. And the Roll of Parliament of 1 *H.* 4. gives the true reaſon in theſe words. **Item prient les Communes que Come Richard jadys Roy de Engleterre ſecond lan de ſon reigne vint & premier fiſt arreſter Richard nadgaires Count d'Arundel & de Surrey (en plein Parlement) & autres Seigneurs de Royalme a cauſe de lour droit cel Juſtice, loial counſcil, & governance quils fiſterent & deſirerent toutz ditz al Corone & as loialx lieges du Roialme, &c.** *In like manner pray the Commons, that whereas* Richard *the ſecond, late King of* England, *in the one and twentieth Year of his raign did make to be arreſted* Richard *late Earl of* Arundel *and* Surrey *in full Parliament, and other Lords of the Realm, for the cauſe of their righteous Judgment, loial Counſel and Governance, which they manifeſted and deſired to manifeſt to the ſaid Crown, and as loyal Subjects of the Realm, &c.* Here is the true reaſon given of the repeal of the Parliament, they had been tampering againſt their lawful Prince, to ſet up an Uſurper, as he calls him, and were lawfully impeach'd and condemned in that Parliament for their Treaſons; hereupon the Commons interceding for them, pray their reſtitution in Lands and Blood, which ever in ſuch revolutions as theſe were was moſt uſual. And now to give our Author a ſight of himſelf, and to bring him, as *Alexander did his horſe to the Sun that he might not kick and ſtart at his ſhadow*; he ſaith, that in the 4 of *Ed.* 3. *Roger* Lord *Mortimer* Earl of *March* was condemned as a Traitor, and he will ſay it was regularly and Parliamentarily done, for that he was (*he ſaith ſo*) adjudged only by the Lords Temporal, and yet this Judgment was reverſed for the Errors thereof in all points in the Parliament, 28 *Ed.* 3. *Cott.* Abridg. 85. And ſo by his way of arguing the Judgment being annulled, it ſhould be for the manner of its paſſing, which as he ſaith, was by the Temporal Lords only: in like manner *Ric.* Earl of *Cambridge* was condemned, in the 3 *H.* 5. for Treaſon by the Duke of *Clarence* and other Peers, Earls and Barons at *Southampton*, and that Judgment afterwards brought into Parliament, and there ratified in full Parliament, where the Biſhops were preſent, which I deſire this Author to take notice of; and yet all theſe proceedings were repealed, 1 *Ed.* 4. I ſuppoſe this Author would not ſay that it was done for the form of Judgment paſſed on him by the Duke of *Clarence*, and the other Peers of *Southampton*, for this was very regular (will our Author ſay) it being done by the Temporal Peers only, and afterwards ratified in full Parliament, but it was for that he was of the *Yorkiſh* party, and in that Line was the right of Succeſſion, and therefore in Juſtice he ought, as he was in his Succeſſor reſtored by *Ed.* 4. In like manner the Duke of *York* and the other Earls who fought in the battles of

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St. *Albans*, *Bloreheath*, and *Ludlow*, were all Attainted and Condemned for Treaſon, &c. as before I intimated, *p.* 29. and their Lands in fee and tail forfeited, and yet theſe proceedings were repealed (being nothing deficient in form) in the following Parliament of the 39th of *H.* 6. for that the Houſe of *York* was then going to be reſtored to the Crown; I might be infinite herein, but theſe are convictions enough to this Author, that there was no deficiency in the forms of proceedings, but for that theſe matters which were formerly ſo tranſacted, in favour or out of juſtice to the ſufferers, were again brought on the ſtage retrieved and repealed. So that we willingly grant that this Parliament of the 21 *Ric.* 2. is repealed in that of 1 *H.* 4. who in truth was not lawful King, but it was not done becauſe the Biſhops made Proxys (as he weakly argues) in that Parliament; but becauſe theſe Men had embark'd with *H.* 4. in an evil cauſe, againſt their lawful Soveraign, and ſo when he came to the Crown he could do no leſs in gratitude, though in juſtice he ought not to have done it, neither ought they to have been rewarded for this their rebellion; *but only ſo it was then done, and right was trodden underfoot, by the power of an Uſurper.* Moreover I would deſire theſe Gentlemen to take notice that what was here done by the Biſhops as to their abſenting themſelves and making Proxys, it was done by the King's command and at the petition of the Houſe of Commons. **Pour quoi diverſe juggements & ordenances fait en le Reignes de ſa predeceſſors du Roy en Parlement, &c. For that diverſe Judgments and Ordinances made in the Reign of the Kings Predeceſſors** [*not only in the caſe of the* Spenſors, 15 *Ed.* 2. immediately Predeceſſor to this King, but in the Reigns of his Predeceſſors in the plural, ſo that it was *oftner done than once*] and the words are diverſe *Judgments and Ordinances of the King in Parliament have been repealed and adnull'd*, for that the Clergy were not preſent in Parliament at the making thereof; the Commons prayed the King that for ſecurity of his Perſon, and the preſervation of the Realm, the ſaid Prelates and Clergy ſhould appoint a Proctor with ſufficient power to conſent in their *names to ſuch things as ſhould be done in that Parliament*; they had before in the Parliament of the 11 of this King's raign, given the reaſon why they could not be preſent at ſuch Trials [as before] *pag.* 8. and what they now did was *the King's expreſs command at the Commons requeſt, and for the reaſons aforeſaid (for that diverſe Judgments, &c.) and by the aſſent of both Houſes of Parliament.* Yes, but ſaith this later Author, *the diſcourſer*, that this was *a palpable miſtake* de facto *of the Houſe of Commons*, pag. 26. and again, ſaith he, *it was an unaccountable, a very ſtrange overſight, in the Houſe of Commons at that time*, pag. 27. that *they became Innovators on ſo falſe a ground, &c.* and thus 'tis uſual with theſe Authors to anſwer Arguments and Precedents, which otherwiſe are unanſwerable, that they are *Irregular, unparliamentary, unuſual*, Errores temporis, *extravagant, &c.* *As the firſt Author*, pag. 28, 30, 79. *&c.* and as to this later, that they are *palpable miſtakes in the Houſe of Commons*, that they are *ſtrange and unaccountable overſights, Innovations upon falſe grounds*, pag. 26, 27. Now pray Gentlemen is this the way to

anſwer

answer the Arguments and Precedents, by telling the very Gentlemen of the House of Commons, who then were and knew all the circumstances and reasons of their own actings, that they were much mistaken, that they acted irregularly, unparliamentarily, were extravagant, and innovators, &c. were they not likelier to know much better of these things then your selves, who are but Men of *these last and puny times.* Gentlemen, I will take the liberty to give you a very (I think) pertinent instance in this matter, I pray take it not amiss, for I intend no reflection upon any person or party of Men. You know, or I presume may have heard, that a very great Lawyer Sir *Edw. Coke* was of opinion in the 4 *Instit. pag.* 10. that *Walsingham* a grave and sober Historian, who wrote of his own times and things then transacted, and of which he either was or might have been an Eye or Ear witness, had been guilty of a great mistake, error and untruth, in saying that Common Lawyers were excluded by express words in the King's Writ of Summons to the Parliament of 6 *Hen.* 4. Certainly the Historian then living, and being knowing, nay curious in those things, might probably be thought to know the truth hereof, better then Sir *Edw. Coke* who lived some hundreds of Years after him, however Sir *Edw.* in the place before quoted, doth confidently charge the Historian with an untruth; whereas indeed he himself was in the mistake. For the words in the Writ are, and now to be seen in the Tower, *Nolumus autem quod tu aut aliquis alius Vicecomes regni nostri aut* **Apprenticius sive aliquis alius homo ad legem aliqualiter sit electus.** The application or [illegible] hereof is obvious, here were the whole House of Commons (not a single Historian only) openly avouching matters of fact of their own or immediate preceding times, openly contradicted by an Author, I am sure far inferior to Sir *Edw. Coke*, they say it was done as before, **in divers Judgments and Ordinances of Parliament. And in the Kings predecessors time, not only in the time of** Edw. 3. This Author very confidently saith it was done but once, in 15 *Ed.* 2. and how much he is to be trusted even in this shall after appear; they lived in the times when these matters were agitated; this Author lived a Century of Years very near after Sir *Edward*, and some hundreds after the House of Commons, to whom he doth in effect give the *Lye.* Let the reader say who of these are likeliest to speak truth. And so far for that Parliament. I come in the next place to that of 1 *H.* 4. where we shall find one *Rickill* one of the Judges of the Common Pleas, who had been sent to *Calais* to take the Confession of the Duke of *Gloucester*, call'd to give an account of that matter, he was under arrest for it, and was brought into the Parliament to do it; against him the Author here confesseth, *p.* 31. *that there was neither charge nor impeachment so the Bishops might be and were present at his examination*; but mark our Author, *they must* (saith he) *have no hand in giving any Judgment upon it, because it might have been preparatory to an accusation and impeachment.* Is not this plainly δολεύειν ὑποθέσει, *to serve an Hypothesis*, he very well knows that the matter he was to prove was, that the Bishops are not to Vote in Capital cases in Parliament,

and

and here they did aſſiſt at his examination, preſent they were he himſelf confeſſeth, and it ſeems he was not in any fault, if ſo there was no need of their being any farther preſent, nor for the Temporal Lords neither any farther to be ſo; and ſo I leave it to the reader to judge what this makes for his purpoſe.

In the ſame Parliament one *Hall*, a ſervant to the Duke of *Norfolk*, who had a hand in the murdering of the Duke of *Glouceſter* at *Calais*, is brought into Parliament there to be Tried, for that by his own confeſſion he had a hand in the death of the ſaid Duke; the murder and the circumſtances thereof is at large related in *Cottons* Abr. *pag.* 400. here needed no great pains to be taken to prove the fact upon *Hall*, who himſelf had openly and freely diſcloſed it, and confeſſed himſelf guilty of it; and here indeed I find no expreſs mention of the Biſhops being preſent at his condemnation, who 'tis very probably might not be there, but leave the matter to be tranſacted by the Temporal Lords, without any impeachment to their right, it being ſecured as before, as our Author ſaith, by the ſecurity of a confeſſed Act of Parliament, 11 *Ric.* 2.

2 *H.* 4. The next precedent our Author ſpeaks to, was of one *William Sautre*, whom he calls our St. *Stephen* the Protomartyr of *England* (though I think St. *Alban* lived ſome hundreds of years before him) concerning him we find a Writ to have been directed to the Mayor and Sheriffs for his execution; 'tis well the then Popiſh Biſhops did not ſign that Writ, for elſe to be ſure of it (though the Religion of our Country was then Popery and all our Anceſtors equally blameable) the now Proteſtant Biſhops muſt have been twitted with it. Well but what was then done? Why the Record is, **Item ceſt Meſquerdy un Briel fut fait as Meir & Viſcountz de Londres per advis de Signeurs Temporelz en Parlement de faire execution de** William Sautre. *This* Wedneſday *proceſs was made by the Temporal Lords that execution ſhould be done on* William Sautre. Now comes the Biſhops charge, our Author ſaith, he doubts not *but that the Biſhops and Clergy of thoſe times were the chief promoters of this*; ſuppoſe they were, why then they acted in a capital Caſe, which makes againſt the Gentleman, if they were preſent at the judgment given againſt him, he hath brought a precedent againſt himſelf; but to ſay truth, here it doth only appear who ſigned the warrant for his execution, or at leaſt ordered the Mayor and Sheriffs to do execution on him, and they were the Lords Temporal; ſo that by this the Biſhops hath eſcaped this Gentlemans laſh, having no hand in it; but who were his Judges *nondum conſtat.*

But in the ſame Parliament he finds *the Earls of* Kent, Huntingdon, *and* Salisbury, *the Lord* le Deſpencer, *&c. declared and adjudged Traytors* (though they had been taken and executed before) *and their eſtates to be forfeited.* Well! All this we grant: Here, ſaith he, *were no Biſhops preſent ſo much as to declare and judge it a Treaſon, though the perſons who had committed it were dead before*: And this is alſo granted him, but how if I give him a parallel inſtance, where a perſon being condemned before, the whole proceedings (very likely

likely they wanted confirmation) were afterwards brought into Parliament there to be ratified, I ſuppoſe there was ſome reaſon of this being ſo done as is expreſſed: It was in the caſe of *Richard* Earl of *Cambridge*, and the Lord *Scrope*, the proceedings againſt whom were brought into Parliament, 3 *H.* 5. at the deſire of the Commons, and were there ratified and confirmed, and the Biſhops then were, our Author ſaith, [*p.* 118.] and might be preſent; for, ſaith he, *I look upon it as an Act of Parliament not attainting them, but confirming their attainder.* If ſo, then this Gentleman hath anſwered himſelf in a caſe parallel in all things, and the matter of fact by himſelf confeſt. And ſo we come to the Parliament of the 5 *H.* 4. where his argument is as weak as before. Here the Earl of *Northumberland* comes before the King, Lords and Commons, petitioning the King for pardon, for not keeping his Statutes and Laws, (as Legeance demandeth, &c.) *Rot. Parl.* 5 *H.* 4. *n.* 11. the Petition is in Engliſh, and there followeth, *which petition, by the Kings commandment, being examined by the Juſtices to have their Counſel in this behalf, upon the proteſtation made by the* **ſaid Lords that the Judgment appertained to them only as Peers of the Parliament.** [Who theſe are, ſee *Mautravers* caſe and the proteſtation, 11 *Ric.* 2. before cited] to whom ſuch judgments appertain of right to hear, &c. they adjudge that theſe things which the ſaid Earl hath done are not Treaſon, nor Felony, *but only Treſpas*, &c. *Wherefore the ſaid Earl moſt humbly reverenceth our Lord the King, and the ſaid Lord the Peers of Parliament, concerning the right judgment, &c.* *Seld.* Baron. *pag.* 106, 107, 108. This you may ſee at large in Mr. *Seld. l. c.* I have the rather made uſe of Mr. *Selden* for that he is known to have been no friend to the order of Biſhops, however let any man judge if there is any thing in all theſe paſſages which do in the leaſt give any pretence to any perſon whatever to argue from hence that the Biſhops were not preſent, does it not ſtrongly argue the contrary? Is he not ſaid to come before the King, Lords and Commons, **that in the Parliament?** See *Cott.* Abr. *n.* 11. Where the **Lords** make proteſtation *that the order thereof belongs to them*, and the Biſhops are Lords of Parliament, is before proved, *p.* 54, 55. but here *n.* 15. moſt expreſly, where they judge the action of *Henry Percy*, and others of his adherents, at the battail of *Shrewsbery* to be Treaſon. *Item, on the ſaid day, the levying of war of the ſaid Sir* Henry Percy *and others, was adjudged Treaſon by the King, and* **Lords in full Parliament.** But how doth it appear that the Biſhops were preſent at either of theſe Judgments? I anſwer, it doth plainly appear that the Archbiſhop of *Canterbury* was preſent at the former judgment, for that he then in expreſs words prayed the King, *That foraſmuch as he and the Duke of* York, *with other Biſhops and Lords, were ſuſpected to have been of the confederacy of the ſaid Sir* Henry Percy, *that the ſaid Earl would now publiſh the truth, whereupon the Earl by the King's command, upon his oath, purgeth them all thereof.* *Numb.* 14. Cott. *Abr. p.* 426. And at the ſame time, *Numb.* 15. Sir *Henry Percy's* action was adjudged Treaſon by the King and Lords **in full Parliament.** Here is no departure of the ſaid Archbiſhop or Biſhops mentioned, and it was done

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as is before expreſſed in *full Parliament*, when all the three Eſtates Lords Spiritual, Temporal, and Commons are preſent. Which is as Mr. *Prynn* obſerves, *Cott.* Abr. *pag.* 710. *Nota marginali*, Who I dare boldly ſay [upon the ſmall acquaintance I have with them] knew better of Records, and what **plein Parliament** meaneth, than either of theſe Authors or twenty ſuch as they: that *The three Eſtates muſt concur to make a Parliament, or elſe* (*King* Richards) *title would neither be valid nor ſatisfactory but ambiguous, as before, no one or two of them being a* **full and real Parliament** *but all conjoyn'd.* But of this I ſhall ſpeak afterwards, when I come to make appear who are the three Eſtates of Parliament.

7 *H.* 4. A judgment was given (*ſaith the Gentleman*) much like that foregoing, in the 2 *H.* 4. when the Earls of *Kent*, *Huntingdon*, &c. who for levying war againſt the King, had been taken and executed, as the Earl of *Cambridge* was, 3 *H.* 5. whoſe condemnation and ſentence was brought into the Parliament to be ratifi'd and confirm'd; which if it was done by Act of Parliament as that was, the Biſhops muſt of neceſſity be preſent, for that no Act can paſs without their being preſent, and therefore if this caſe (as the Author ſaith) was like the two foregoing caſes, the proceedings againſt thoſe Lords being brought into Parliament, there by an Act to be ratified, as before, and as he expreſly ſaith, it was in the caſe of the Earl of *Cambridge*, *p.* 118. before cited; the Biſhops were actually preſent thereat. And ſo we go on to the caſe of Sir *John Oldcaſtle*, 5 *H.* 5. who being condemned by the Archbiſhop of *Canterbury* for Hereſie, as then it was reputed, and being moreover endited and outlawed in the King's bench for Treaſon; the Commons of *England*, **Baillerent un petition al honorable Prince le duc de Bedford**, *delivered a Petition to the honourable Prince the Duke of* Bedford, *then guardian of* England, that Juſtice might be done upon Sir *John Oldcaſtle* according to his demerit, who indeed though perhaps not for his *Lollardiſme*, yet for other great Crimes which he was then accuſed of (*the murdering the King was not the leaſt*) whereof if he was guilty he might juſtly expect no other ſentence to be given upon him than that which was then given againſt him by the **Lords** to be executed as a Traitor. Now who theſe Lords were, is the matter here in debate, they could not be (ſaith the Gentleman) after his accuſtomed manner the **Lords Spiritual and Temporal**, for then they would not have been ſo expreſſed in a general word **Lords**, in matters of Judicature, to which my anſwer is obvious, and the ſame which I have formerly given him (and that the matter in fact is ſo I have there alſo proved). That in the Caſe of *Gomenitz*, 1 *Ric.* 2. before mentioned they are comprized under the general word of **Peers**, that in the caſes of *Lee Lyons* and *Latimer*, at which the Author confeſſeth, and indeed 'tis plain they were preſent, they are expreſly called **Lords of Parliament**, as before is proved in their caſes, whither I refer the Reader. As alſo it appears from Mr. *Selden's* Baronage, *pag.* 15. where ſupplication is *made by the Commons, that all thoſe that have rendred and loſt Caſtles or Towns may be put to anſwer, and according to their deſert throughly,*

thoroughly punished by the **Award of the Lords and Baronage**, *and that* Allen Buxall (*Constable of the Tower of* London) *shall cause to come* **before the Lords of Parliament**, John *Lord of* Gomenitz, *and* William *of* Weston, who were brought before the **Lords of Parliament** accordingly. Now who were these **Lords of Parliament**, you have it in expres words, *Rot. Parl.* 1 *Rich.* 2. *Numb.* 29. **Quelle Petition lue, &c. dist fuit & commandez in cest Parlement per lez Prelatz & Seigneurs Pieres du Parlement.** *Which Petition or Bill* (against the said *Gomenitz* and *Weston*) *being read, &c. in the Parliament before the* **Prelates and Lords, Peers of Parliament, &c.** Here the Prelates are **Lords and Pers of Parliament**, for that such offenders were to *be punish'd by the* **award of the Lords and Barons of Parliament**, and accordingly were brought before the **Prelates and Lords, Peers of Parliament**, &c. before whom the Bill against the said *Gomenitz* and *Weston* was read, &c. Q. E. D. the same is before proved, likewise in the Earl of *Northumberlands* case, in the 5 *H.* 4. before mentioned, who was brought before the **Lords and Peers of Parliament, &c.** *and the Archbishop of* Canterbury *then present, who then desired the said Earl to purge him and the other Lords and Bishops who were said to be compartiners in the said Treasonable actions with himself, who, &c.* as before, *V.* case 5 *H.* 4. *p.* 114. It is exceeding tedious to repeat what before is proved, but the Readers patience is desired in regard both these two Authors (which yet is but a pittiful begging of the question) will not have the Bishops ever call'd **Lords** in the Judicatory of Parliament, and which yet, as the Reader may see, is altogether false and groundless.

2 *Hen.* 6. Sir *John Mortimer* of *Bishops Hatfield* in the County of *Hereford* Knight, was committed to the Tower upon suspition of Treason against the King, and having made his escape, he was Tried and Indicted for the fact, at the *Guildhall London*, and the Indictment by the Kings command returned into the Chancery, and thence brought into the Parliament before the Duke of *Glouceſter*, and the Lords Temporal, **fuit liberatum**, *was delivered.* Well all this we admit, why then *de advisamento dictorum dominorum.* **Auctoritate istius Parliamenti ordinatum est & statutum quod ipse usque ad Turrim ducatur, &c.** **It was Ordained and Enacted by the authority of the said Parliament, by the advise of the said Lords Temporal, &c.** *That he should be led to the Tower and afterwards to Execution.* Therefore the Bishops are not to Vote in Capital cases in Parliament, *Non sequitur*, was not the matter here decreed, **Authoritate Parliamenti**; if so the Bishops were present, for they are an essential part of the Parliament, at which they are to be present, and to have their Writs of Summons issued to them for their appearance, *ex debito Justitiæ*, they are Sir *Edw. Cokes* words.

28 *Hen.* 6. Here we have a President beyond debate, confest by our Author, *pag.* 41. *at which the Bishops were not only present, but they did then bear a principal part, in this Judicial proceedings.* It was the case of *William de la Pole* Duke of *Suffolk*, who was accused by the Commons of sundry Articles **of Treason and misdemeanours, &c.** *He was brought from the Tower, on the 9th. of* March, *by the King's Writ into the Parliament Chamber, before the* **King and Lords**

Lords, *when the Articles were read againſt him; and on the* 14*th of* March *he was again brought before the* **King and Lords**, *when kneeling on his knee he denyed the ſaid Articles, &c.* Again, *on the* 17*th of* March *the ſaid Duke was made to come before the* **Lords of the Parliament**, as *Numb.* 48, 49, & 50. of the ſaid Roll of Parliament, in which I have been the more particular, for that now when there were no fewer than eighteen Spiritual Lords, and Peers of Parliament, who are all there named, (*viz.*) the two Archbiſhops, thirteen Biſhops, two Abbots, and the Prior of St. *John* of *Jeruſalem*, confeſſedly preſent; the expreſſion is ſtill the ſame, that the impeach'd perſon is ſaid to be brought before **le Roy & Seigneurs du Parlement**, *the King and Lords of Parliament.* So that the Biſhops are here comprized under the general words of **Lords of Parliament**, which both theſe Authors do expreſly deny, the former, in *pag.* 36. the other in *pag.* 15. with confidence enough, *It is moſt certain* (ſaith he there) *that the Prelates are never ſpoken of in any Record, but by the name of* Archiepiſcopi, Epiſcopi, &c. *or* Prelati, *or ſome ſuch name as doth diſtinguiſh them from the Laity.* But with how little truth the Reader will now tell him. Though to do him right I ſhall ſubjoyn what follows, *that if they be ſpoken of* (ſaith he) *they are always firſt named, and put before* **Les Counts & Barons** *as at this day, the Records are entered the* **Lords Spiritual and Temporal, &c.** where his obſervation is good and agrees with the Truth, but then on another account he is misfortunate for this his obſervation proves inevitably that the Biſhops were preſent at the four Trials mentioned, in the 4 *Ed.* 3. *viz.* of *Mautravers*, *Bogo de Boyons*, and *Deverel*, *Thomas Gourney*, and *William Ogle*; where the Record runs as you may ſee fully before in thoſe caſes. **Treſtouz les Pieres, Countes & Barons, aſſemblez.** Where the word Peers occurring firſt will moſt naturally and neceſſarily, according to his own obſervation and the truth it ſelf, ſignifie the Archbiſhops and Biſhops, and for that there were no Duke or Marqueſs Summon'd to that Parliament, and that the words, **Countes & Barons**, do comprehend the Earls and Barons. I have inſiſted the longer on this obſervation, for that I find that 'tis theſe Authors ordinary κρησφύγετον, or *refuge*, to ſay the Biſhops muſt not be comprized under the general words of **Lords and Pærs**, which yet you ſee proved, which indeed, as before is intimated, is but *a ſhameful begging of the thing in queſtion*, and ſo I paſs and come to the matter of the Proteſtation of the Lords Spiritual and Temporal, which was occaſioned by the Kings taking the cauſe out of the Judicatory of Parliament, where it ought to have been Tried, and his determining of it in an extraordinary manner, which they deemed a breach of their Rights of Peerage, on which account both the Lords Spiritual and Temporal joyned in that Proteſtation, their common Right of Peerage being invaded and violated; now, as before, I intimated, *pag.* 14. the Temporal Lords would never have joyned with the Lords Spiritual in this Proteſtation, if they had then thought that Judgment in Capital cauſes had been their ſole Right, for this had been to their diſadvantage; for here

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they avow the Right to be common to both Eſtates, Spiritual and Temporal, and that ſtands on the ſame foundation and bottom, (*viz.*) as before, *pag.* 25. **On account of their Pærage**, &c. Which words were left out by the firſt of theſe Authors, and yet he gives you the words both going before and following after; and theſe you ſee do prove the Lords Spiritual to be Peers of the Realm, which he expreſly denies in ſeveral places of his Book, *pag.* 7, 84. &c. and pretends to anſwer the arguments, which (as ſhall be made manifeſt he hath not done) do evidently prove the contrary. But theſe words in **caſe of their Pærage, as freely as they or any of**, &c. made not, I think, for the Gentlemans purpoſe, and that therefore he omitted them; but whether it was fairly and ingenuouſly done, and with a deſign to ſpeak the whole truth in this Controverſie, or rather to tell his ſtory all on one ſide, I muſt leave to the Reader to judge, and come to conſider of his Anſwer which he gives to this ſo ſtunnying a precedent: 'Tis in ſhort this, *p.* 48. *It is irregular and extravagant from the beginning to the end, that 'twas an odd and unuſual thing, &c. And that 'twas all a Hodge podge of a Trial, and that no man can tell what to make of it, and that 'tis not of any ſignification to be a precedent or rule of proceedings in Parliament.* But pray, Sir, is this to anſwer? 'Tis poſſibly your opinion, but if you would have us believe you muſt give your reaſons, which you never went about there to do, expecting we ſhould take your *αυτὸς ἐφὶ* for proof, which we are not willing to do; but ſhall conſider of your Reaſons when you are pleaſed to ſubjoyn them. Well but the Gentleman goes on and ſaith, *admit it to be regular it is but a ſingle precedent of the Biſhops Voting in a Capital cauſe againſt multitudes excluding them, &c.* I anſwer, I pray then let us go from the beginning and ſee, if we can, on which ſide the current runs.

1. Precedent is in the Trial of *Roger* Earl of *Mortimer* and others, 4 *Ed.* 3. which was an attainder as appears, 28 *Edw.* 3. where *Roger* of *Wigmore*, Coſin and Heir of that Earl of *March*, petitions the Parliament, that the proceedings may be reexamin'd, and repealed if found faulty, which was done accordingly, the Attainder repealed as being againſt *Magna Charta*. This was an Attainder and the Biſhops were or ought to have been preſent at it, as our Author confeſſeth, *p.* 118.

2. Caſe is that of *Mautravers* where the Biſhops are proved of neceſſity to have been preſent. *Vid.* the caſe it ſelf, *pag.* 38.

3. Is *Bogos de Boyons* and *John Deverel*, where the ſame Judgment is given as before.

4. Is of *Gourney* and *Ocle* the Murderers of *Edw.* 2. the like Judgment upon them the ſame perſons preſent.

5. Is of Sir *Thomas Berkley*, the Judgment was given in *pleno Parliamento*, and ſo all Eſtates preſent according to Mr. *Prinns* notion of **plein Parliament**, on Sir *Rob. Cott. p.* 710.

6. Caſe, 5 *Edw.* 3. the Biſhops only ſay that it doth not properly belong, &c. but afterwards they came and gave their aſſent to an Act of Parliament

liament for the conſervation of the peace, as the later of theſe Authors ſaith, *p.* 16.

7. Caſe, in the ſame Parliament is concerning a quarrel hapning in the King's preſence, and how one of the quarellers laid his hand on his Sword. The Biſhops are not ſaid here to be preſent at the Judgment, and 'tis very likely they did not look upon themſelves as very fit Judges of ſuch quarrels, and ſo might leave it to the Temporal Lords, whom the King 'tis ſaid did charge to give Judgment in this matter.

8. Caſe is Capital for Bribery, the Lord Chief Juſtice accuſed, who is there Judg'd by the **Grantz** a word ſignifying in general the Members of the Houſe of Peers, as is I think plainly there proved, and ſo the Biſhops might be preſent.

9. Is in the 42 *Edw.* 3. 'tis the caſe of Sir *John Lee Steward* of the King's houſhold, and for miſdemeanors, and the Biſhops here are expreſly ſaid to be preſent.

10. In the 50 *Edw.* 3. ſeveral perſons were accuſed of Crimes which were in the event but miſdemeanors, but might have proved Capital, as particularly that of the Lord *Latimer* for loſs of Forts, which was ſo judged in *Gomenitz* and *Weſton*'s caſe, at theſe the Biſhops were confeſſedly preſent.

11. 1 *Ric.* 2. of *Gomenitz* and *Weſton* the Crimes were Capital, the Biſhops may very well be ſaid to have been preſent, for that they were Tried *in full Parliament*, the Bill being commanded to be read by the Prelates and Lords, Peers of Parliament, and the Biſhops no where ſaid to withdraw.

12. Is of *Alice Perers* caſe, in the ſame Parliament, where the Prelates are expreſly ſaid to be preſent, as before in *Lyons*, *Lees*, *Latimers* and *Nevils* caſes.

13. Is the caſe of *John Impenal* who being a publick Miniſter of *Genoa* was kill'd by two Merchants; an Act of Parliament was made againſt the like enormities for the future, and the Biſhops were at the paſſing of that Act.

14. Is the caſe of Sir *Ralph Ferrers*, the crime was for correſponding with the King's enemies, but upon Trial he is acquitted by the **Lords of Parliament**, which words do comprize the Biſhops and Peers, as is proved in this and other caſes, as of *Latimer*, the Earl of *Northumberland*, 5 *H.* 4. and of others *paſſim.*

15. Is of the Biſhop of *Norwich*, 7 *Ric.* 2. on whom Judgment was paſſed for miſdemeanors by the **Lords**, by the aſſent of Parliament, where the Biſhops as before are preſent.

16. Of *Michael de la Pole* Lord Chancellor, 10 *Ric.* 2. for a Capital Crime, (*viz.*) Bribery, at which the Biſhops *in terminis* are ſaid to have aſſiſted.

17. Is concerning the Parliament of the 11 *Ric.* 2. where the Biſhops were preſent by their Proteſtation. **Their Right of being preſent and of their Peerage, quoad omnia & ſingula**, *in all and every thing being to them reſerved intire.*

18. Is

18. Is the caſe of *Haxey*, 20 *Ric.*2. at which I do not find the Biſhops preſent.

19. Of the Parliament, 21 *Ric.* 2. where the Biſhops were preſent by their Proxies as is largely proved.

20. Is the caſe of Mr. Juſtice *Rikhill*, 1 *H.* 4. againſt whom there was no Charge nor Impeachment, and ſo there could be no Judgment given by any body.

21. Is the caſe of *Hall*, who murdered the Duke of *Glouceſter*, at whoſe Sentence it doth not appear that the Biſhops were preſent.

22. Is the caſe of *Sautre*, 2 *H.* 4. who was declared an Heretick, his Sentence of condemnation doth no where appear no otherwiſe than that there was a Writ framed in Parliament by the Lords Temporal for his Execution; but who were his Judges when condemn'd, *non conſtat.*

23. Is the caſe of the Earls of *Kent*, *Huntingdon*, *&c.* in the foregoing Parliament, who had been taken and Executed for levying War againſt the King. This Act of theirs was adjudg'd Treaſon by the Lords Temporal, and it doth not appear that the Biſhops were preſent at the Judgment. Though, as I have here noted, they were in a caſe parallel to this of the Duke of *Cambr.* 3 *H.* 5. who was Condemned and Executed for Treaſon, &c. at *Southampton* and the Sentence confirmed after in Parliament, at which the Biſhops were preſent.

24. Is of the Earl of *Northumberland*, 5 *H.*4. where the **Lords of Parliament** *make Proteſtation that the Right of Judicature belongs to them only, and accordingly by their Judgment he was acquitted*, and at this Trial the Archbiſhop of *Canterbury* was, and therefore the reſt of the Biſhops were preſent alſo.

25. Is the caſe of Sir *John Oldcaſtle*, 5 *H.* 5. who in this Parliament was by the **Lords** adjudged a Traitor; and that the Biſhops are Lords of Parliament, ſee proved before, in the Earl of *Northumberlands* caſe immediately preceding, and alſo in other caſes before that.

26. 2 *H.* 6. Sir *John Mortimers* caſe, againſt whom the Lords in Parliament having found the Indictment, he was by requeſt of the Lords and Commons but **by Authority of Parliament** condemned, &c. and therefore the Biſhops were preſent.

27. Caſe is of *William de la Pole* Duke of *Suffolk*, 28 *H.*6. where our Author confeſſeth (the Caſe being Capital) that the two Archbiſhops, thirteen Biſhops, two Abbots and the Prior of St. *John* of *Hieruſalem*, in all ſeventeen Spiritual perſons were preſent.

And thus far we have gone along with our Author, and do refer it to the Reader whether our Author may be believed, when he ſaith, *p.* 49. *That the Biſhops never voted but once in a Capital Caſe, and that this was the conſtant courſe and practiſe of Parliaments.* I am of opinion that there are as many Precedents on the part of the Lords Spiritual voting, as for the Lords Temporal only, in the mean time *penes æquum lectorem ſit judicium*, and ſo I go on to the few caſes remaining; the next is of the Earl of *Devonſhire.*

31 *H.*6. he was Tried upon an Indictment before *Humphrey* Duke of *Bucks* Steward of *England*, *for that time aſſigned* (*of Treaſon*) *before his Peers, the noble Lords of this Realm of* England, *and was acquitted.* Pray ſee what our Author hence argues? 'Tis this, *Now I ſuppoſe no man will ſay, that the Biſhops were neither his Peers nor Lords of the Realm:* which is, as before, to beg the queſtion, and I think both of theſe are ſufficiently proved in the caſe of *Mautravers's*, *Gomenitz*, in the Proteſtation in the Parliament of 11 *Ric.*2. in the Earl of *Northumberlands* caſe, &c. but of the Biſhops Peerage more hereafter.

38 *H* 6. The Lord *Stanley* was accuſed of being confederate with the Duke of *York*, the King anſwered, *he would be adviſed*, and ſo the matter ended, and ſo the Precedent is not to the purpoſe.

In

In the next place, our Author comes to the Earl of *Straffords* Trial, where the Biſhops withdrew, and declined their Suffrages, but had their Proteſtation entered, *That their abſence ſhould not prejudice them of that nor any other Privilege competent to them, as the Lords Spiritual of Parliament.*

I ſhall only take leave to mind our Author of two Trials more, and the caſes Capital, and the proceedings are well known.

The firſt is, of the Earl of *Clarendon* who was impeach'd of high Treaſon, and the queſtion being put whether he ſhould be committed, it was carried in the negative, and that the Biſhops then voted.

The ſecond is, of the Earl of *Pembrooke*, when they ſat and debated the whole matter untill the Sentence was to be pronounced.

Our Author likewiſe, *pag.* 55. mentions another caſe, which was that of *Nicholas de Segrave*, who was Summon'd, for his leaving the King's camp in *Scotland*, to anſwer the offence in the Parliament of 33 of *Edw.* 1. where he acknowledged his offence, and humbly ſubmitted himſelf to the King's pleaſure; **Venit in pleno Parliamento in preſentia ipſius Domini Regis Archiepiſcopi** Cantuarienſis **& plurimorum Epiſcoporum, Comitum, Baronum, & aliorum de conſilio ſuo, &c.** He appeared in full Parliament, &c. where I deſire our Author would take notice what a **full Parliament** is (*viz.*) when all Eſtates are preſent, as before, I have noted; and that in the next place, here was no Judicatory of Parliament, but of *Segrave*, 'tis ſaid in the Record, that **in preſentia ipſius Domini Regis & aliorum omnium prædictorum omnia antedicta ſibi impoſita expreſſe cognovit ac voluntati Domini Regis de alto & baſſo ſe ſubmiſit.** *He acknowledgeth his fault, and ſubmitteth himſelf to the King, and that the King pardoned him,* **de adviſamento Comitum Baronum & Magnatum & aliorum.**

And now we come to the caſe of *Becket*, in the Parliament of *Northampton*, 11 *H.* 2. wherein *Becket* was adjudged by the Biſhop of *Winton*, by the King's command, when the other Lords did not agree who ſhould do it, upon a crime Capital, 'twas **Leſe Majeſtatis**, as *Stephanides* a grave and ſober Hiſtorian hath it; but this Book (our Author ſaith) was wrote by one *much ſuſpected for partiality, and that he was a creature of* Beckets, *p.* 63. and he calls his Book, *a blind Manuſcript*, ſure I am Mr. *Selden*, and all other Antiquaries I ever yet read, have had another much better opinion of *Fitz-Stephen*, but his authority is againſt his Hypotheſis, and 'tis uſual with him on ſuch occaſions to let fall ſuch expreſſions to vilifie Teſtimonies and Precedents when they make againſt him; but that he may not do it altogether without reaſon he tells you, *that other Authors do not make mention that he was accuſed for treaſon.* I anſwer, though others do not, muſt therefore a grave Hiſtorians Teſtimony be invalid, may not one Author ſupply the defects of another, are all circumſtances or matters of Judgment equally and alike known to all reporters? Is it a good argument to ſay ſuch an Author or Authors ſay it not, therefore the thing is not ſo. The Gentleman hath forgot his Logick. *Argumentum ab authoritate non valet negative.*

Here then immediately after the ſo much celebrated Council of *Clarendon*, we find a Biſhop pronouncing a Capital Sentence upon another Man of his own Order, which makes it clearly to appear, and which I deſire our Reader to take notice of, that upon the King's command, *who is their natural Leige Lord*, they, *the Biſhops*, ever did in ſucceeding times receive Commiſſions, and acted as chief Juſticiaries and in other places of Judgment too, as they ought to do: for though the Prince may indulge ſome Priviledges to his Clergy, (as this of not compelling them to Vote in caſes of Blood in Parliament, where by the Canon Law they are prohibited) which muſt yield to the Law of the Land, and cannot deveſt the King of his right of uſing any of his Subjects (*Clerks or not*) in any places of employments he ſhall think fit to employ them in, or in which he may think them capable of doing him or the publick good ſervice. No, Sir, this is a piece of Popery which our Biſhops have with the reſt rejected. A Clerk, when he is made ſuch, doth not ceaſe to be the Kings liegeman and Subject; nay, let me tell both theſe Authors, that the Popiſh Clergy, though

ſome of them at ſome times, have not been ſo dutiful to their Soveraigns as they ought) have generally deſerved better than they have been repreſented by theſe two Authors; for even in theſe Critical Times when *Becket*, countenanced by the Pope, was endeavouring to erect *imperium in imperio*, and the Pope and his Clergy, as *Doderidge* ſaith, and Sir *Edw. Coke*, and *Selden* from him; the former 2 *Inſt.* 631. the later, Titles of *Hen.* p. 582. *That the King's Prerogative, and the Peoples Right, was going about to be infring'd by the Pope and Papalins aforeſaid, endeavouring particularly to make Clergy-men no Subjects to their Princes, but to the Pope only*; even then, I ſay, we find the Body of the Clergy of this Nation openly adhering to their Prince in the quarrel againſt *Becket*, and conſequently the Pope, alſo giving great commendations of their King, and aggravating the crimes and exceſſes of *Becket*. See their letter to the Pope, in *Baronius*, *An.* 1167. § 43. *Finding, ſay they, the peace of the Kingdom not a little moleſted with the outrageous exceſſes of inſolent Clerks, and having with due reverence to the Clergy referr'd their offences to the Biſhop, and theſe exceſſes* (ſay they there) *being only puniſhed by degradation, and the King thinking this no ſufficient puniſhment for ſuch offences; hereupon the King not with any conceit of oppreſſing the Peoples Liberties, but with a deſire of confirming peace, the King would produce to light the cuſtoms of his Kingdom and dignities antiently obſerved, and quietly and reverently yielded unto by perſons Eccleſiaſtical, to former King's in the Kingdom of* England, *to the end that the thred of contention might be no longer ſpun, the King would have the ſame openly known; wherefore the moſt antient Biſhops and great Peers of the Realm, being firſt ſworn by their faith and the hope which they had in Almighty God, ſearching into the ſtate of forepaſſed times and the dignities of the Crown being ſought into were laid open; they were by the teſtimonies of Men of the greateſt account in the Kingdom publiſhed and made known.* "See here (*ſay they*) the cruelty of our Lord the *King* againſt the "Church of God, which hath ſo much been ſpread abroad over the whole "World! Behold here his perſecution! *And theſe are the works ſo divulged for wicked both here and every where!* And then they go on to ennumerate the bitter provocations of *Becket*, his Treaſonable actings againſt his Prince, &c. and the Kings patience towards him; they thus conclude for their Prince againſt *Becket*, *If the King's humility be ſo requited, what ſhall be determin'd againſt the ſtubborn? If the ready devotion of obedience be eſteemed ſo ſlightly, in what manner ſhall wilful obſtinacy be revenged? &c.*

In like manner when King *John* in unkingly manner had ſubjected his Crown and Kingdom to the Pope, by his Legate *Pandolpho*, who were greater ſticklers againſt that baſe Act, and the Popes title acquired by ſuch a ſlaviſh ſubjection than the then Popiſh Prelates were: See for this the Patent 17 of King *John m.* 15. *dorſo*; where the King expreſly complains of that their gallant behaviour, and true Spartan courage for their Country in that affair. **Item Domino Pape, &c. In conſpectu paternitatis veſtre humiliamus ad gratias multiplices prout melius ſcimus & poſſumus exhibendas pro cura & ſolicitudine quam ad defenſionem noſtram & Regni noſtri Anglie paterna veſtra benevolentia indeſinenter apponit, licet Duritia prelatorum Anglie atque Inobedientia malitioſe impediunt pie veſtre proviſionis effectum.** Afterwards he calls the Biſhops, **Superbi & malevoli, &c.** *Item to our Lord the Pope, &c. In preſence of your Fatherhood we proſtrate our ſelves giving you manifold thanks as we are able, for your care and pains in defending us and our Kingdom of* England *daily applied, although the ſtubbornneſs of the Biſhops of* England *as well as their diſobedience do malitiouſly hinder its deſired effect, &c. afterwards calls them proud and ſelfwilled, &c.*

Moreover, whereas the Pope uſed frequently, that he might get all Preſentations as well of Biſhopricks, as other Eccleſiaſtical Preferments, into his own hands, to remove all Cauſes to *Rome*, prohibiting any perſons either Eccleſiaſtical or Civil from intermedling for or touching any Preſentations; and if they did, to excommunicate them, *&c.* This being againſt the Right of the Crown as well as Municipal Law of our Kingdom, I find a ſolemn and open Proteſtation of that worthy Prelate *William* Archbiſhop of *Canterbury* 16 *Ric.* 2, againſt the Popes Uſurpati-

ons,

ons, Proviſions and Excommunications in *England*; to this effect: **In the Name of God Amen; We *William* Archbiſhop of** *Canterbury, &c.* **do ſolemnly make this Proteſtation in open Parliament**, &c. ſaying, **That the Pope ought not to excommunicate any Biſhop, or intermeddle for or touching any Preſentation to any Eccleſiaſtical Dignity recovered in any of the Kings Courts, &c. *And further we Proteſt* That the Pope ought not to make any Tranſlations to any Biſhoprick within the Realm, againſt the Kings will; for that the ſame was the deſtruction of the Realm and Crown of England, which hath always been ſo free, as the ſame hath had none earthly Soveraignty, but only is ſubject to God in all things touching Regalities, and to none other.** The which Proteſtation he prayed that it might be entred, and it was done accordingly.

Not to add that the Popiſh Biſhops in *H.* 8. times were ever as active and forward in hindring Appeals to *Rome*, in taking away the Popes Supremacy, and ſetling it upon the King, 26 *H.* 8. *c.* 1. as any other Laicks were; and as I cannot much commend the Ingenuity of theſe Authors, in not taking any notice of what the Biſhops of that perſwaſion did do well in defence of the Crown and the Law, obliquely reflecting on all occaſions almoſt on the Order it ſelf, if they did any thing ill; ſo I ſhould be equally faulty ſhould I go about to excuſe or palliate their Failings in ſiding with the Popes, and relinquiſhing their Soveraign's Intereſt. So then to return from whence we digreſſed, I would deſire theſe Authors to remember, that even in thoſe times the Canons of the Church, or Decrees of the Popes were not look'd upon by the then Biſhops and Clergy as univerſally and indiſpenſably obliging. And that it was ſo, we have here a clear Inſtance of *Becket*'s Caſe; wherein the Biſhop of *Wincheſter* pronounced the Sentence *by the Kings Command*, in *October* following the Recognitions of *Clarendon*, which were paſſed in the Moneth of *February* preceding; ſo that I do believe the Biſhop did not forget that he had ſworn to obſerve thoſe Conſtitutions, being but ſo ſhort a ſpace of time before, as the former Author ſaith, *p.* 61. But that I think that the Biſhop did look upon the 11th. Article of that Aſſize to have been in favour of his Order, and *That his Priviledge of abſenting himſelf was there recogniz'd in favour to his Order, and out of reſpect to the Canons of the Church, but that his Juriſdiction in Parliaments* [*or out of Parliaments, if called thereto by the King,*] *was not in the leaſt limited.* And this that was the true meaning of that Article, the Hiſtory and Circumſtances of thoſe times, as well as the Biſhops practice in thoſe times, do evidently make it out; for as I ſaid before, the Pope was endeavouring to make all Clergy men his own Subjects, and independent of their Natural Princes: but in regard that the then Biſhops were his Subjects, and alſo held of the Crown *per Baroniam*, they ought and did obey his Commands, *facere Conſuetudines Regias, obſerve his Laws, intereſſe judiciis Curiæ Regis cum Baronibus, to aſſiſt at the Kings Court with the Barons, and in the Judgments too, in* **Judiciis**; in Math. Paris, *to be preſent in the King's Court with the Barons in* **Judicio**, *in the Judgment*; ſo *Gervaſius Dorobernienſis*, But how far? *till Sentence of Life or Limbe be pronounc'd.* And this is clearly in their favour, and for that they were Clergy-men, the Priviledge was indulg'd them; yet ſo, as not to diveſt the King of his Natural Right to command his Subjects upon any Emergency, to ſerve him when he ſhould be called forth by the King's Command; for the Biſhop in his withdrawing, could only prejudice his perſonal Right in reſpect and reverence for the Canon; but he ought not, neither did he or could he do any thing in prejudice of or derogatory from the Allegiance he owes to his Liege Lord and Soveraign; and that this was ſo, the practice of the Prelates makes it out: for here we ſee the Biſhop of *Winton*, notwithſtanding any Prohibition in the Article [which indeed is none] or Obligation from the Canon, upon his Soveraign's Command, pronouncing a Capital Sentence on *Becket*. And in the 25 of *H.* 2. Not long after that *Roger Hovenden* informs me, *p.* 337. That *Poſt obitum* Ricardi de Luci [he was Chief Juſticiary of *England*] *Dominus Rex Pater magno celebrat Concilio apud* Windeſhores, *Archiepiſcopor. Epiſcopor. Comitum, Baronum diviſit Angli-*

am

niam quatuor partes, & unicuique partium præfecit Viros ſapientes ad faciendam juſtitiam in terra, & ad audiendum clamores populi. That the King after the Death of Lucy *Chief Juſticiary, in a great Parliament at* Windſor, *divided* England *into four Parts; over each of which, he appointed wiſe men to do Juſtice in the Land, and to hear the Complaints of the People.* Who theſe Wiſe men were that were then made Judges, it there follows: Over **Southamteſhire**, *Ricardus Epiſcopus Wintoniæ.* **In Cantebrigſire & Hunte-dunſire**, *Gaufridus Elienſis Epiſcopus. Nicolaus Capellanus Regis, & Nicolaus de* **Wiſe-bec** *Capellanus Regis. In* **Suffolchſire**, *Johannes Epiſcopus Norwicenſis; Hugo Murdoc Clericus Regis,* &c. Theſe were Clergy-men, and made Juſticiaries ſhortly after the Council of *Clarendon*; and that men of that Order have all along acted as Lord Chief Juſtices of *England*, may at large be ſeen in the *Honours of the Clergy, Chap.* 5. and Sir *William Dugdale's Origines.* So that the meaning of this Law will be beſt underſtood by the practice of the Prelates: for would the King, Temporal Lords, and Commons (think you) have ſuffered ſo manifeſt a violation of this Law immediately after its Enacting; all Eſtates ſolemnly ſwearing to the Obſervation of it, I preſume you will not ſay it. But for theſe Gentlemens farther Conviction, they may pleaſe to know that the Popes Canons (though much endeavoured here by his Legates) was not received by our then Biſhops; and for this they may ſee a Decree of Pope *Alexander* in *Roger Hovenden, Anno* 25. *H.* 2. forbidding all Clerks either to plead as Advocates in any Secular Courts, or to be *Juſticiaries* of any Secular Princes. *Clerici non debent Procurationes ſæculares ſuſcipere,* &c. *Coram ſæculari Judice in negotiis forenſibus Advocati eſſe non præſumant,—Nec Jurisdictiones ſæculares ſub aliquibus Principibus aut ſæcularibus viris ut* **Juſticiarii** *eorum fiant Clericorum quiſquam exercere præſumat.* And yet notwithſtanding theſe Papal Decrees, in the very ſame year the King makes the Biſhop of *Winton, Norwich* and *Ely*, his Juſtices; and the ſame was done all along in the Reigns of his Succeſſors, Nay moreover that the Canon of the Council of *Weſtminſter*, held by *Richard* Archbiſhop of *Canterbury* 21 *H.* 2. mentioned and ſet down in *Hovenden ad annum dictum*, was no bar to the Kings uſing his Biſhops as Juſticiaries, or to them acting as ſuch, may appear that at this very time, 21 *Hen.* 2. the Practiſe was otherwiſe. And becauſe we have frequently ſpoken of this ſo famed a Canon, I will out of *Roger Hovenden* ſubjoin it. *Clerici in ſacris Ordinibus conſtitutis judicium ſanguinis agitare non licet, unde prohibemus ne aut per ſe membrorum truncationes faciant, aut inferendas indicent, quod ſi quis tale fecerit conceſſi Ordinis, privetur officio & loco, inhibemus etiam ſub pœna Anathematis ne quis Sacerdos habeat Vicecomitatum aut* **Præpoſiti Secularis** *Officium.* Where you ſee they were not only forbid by this Canon to judge in matters of Blood, but to be employ'd in any Secular Government; and whether this was ſo in the uſe, theſe Authors may eaſily ſatisfie themſelves: were not the Biſhops of *Durham* and *Ely Præpoſiti ſæculares?* Are they not ſuch at this day, and have not other Prelates in every Kings Reign been commanded to undertake ſuch like Offices?

There are only two Particulars more I am to ſpeak to, and then I ſhall have done with the Gentleman our firſt Author, and afterward our Reader ſhall have a brief but full account of the ſecond Author, the Diſcourſer and his Book, his weakneſs in Argument, as well as Miſtakes in Precedents.

As to the former Author, I ſhall prove 1. That Biſhops are Peers of Parliament.

2. The Lords Spiritual are one of the three Eſtates of the Realm; both of which he denies.

For the Firſt; it is proved from the general Stile of all Parliaments, which run thus in the *Saxon* times. **Commune Concilium Cleri quam Populi**, of a Parliament of King *Ethelbert*, *An.* 605. *Spelm. Conc. p.* 126. King *Ina's* Parliament was held *per communem Aſſenſum omnium Epiſcoporum, &c.* An. 612. The Grand League, was made *per commune Concilium & Aſſenſum omnium Epiſcoporum, Procerum, Comitum &c. & per præceptum Regis* Inæ, *Bed. Eccl. Hiſt. l.* 1. The ſame may be ſeen all along in *Spelman* and *Lambard*, whither I refer the Reader for his full ſatisfaction; where he will find the Biſhops always named firſt and principal members of all Parliaments,

ments, the ſame in the *Daniſh* Government, in the Laws of King *Cnute* which were made *cum conſilio & decreto Archiepiſcoporum Epiſcoporum*, &c. The ſame under the Conquerour who held the Parliament *Anno Regni ſui* 5to. were preſent *Epiſcopi, Abbates, Comites & primates totius Angliæ.* Math. Paris in Willielm. 1. The ſame under his Son, *Will.* 2. *Anno Regni* 90. *De regni Statu acturus Epiſcopos, Abbates & quoſcunque Regni proceres*, &c. *Eadm. Hiſt.* l. 2. The ſame under *H.* 1. *Malmesbur. Hiſt. Reg. Angl.* l. 5. and under *H.* 2. in *Hovenden* at the deciding the Controverſy betwixt the Kings of *Caſtile* and *Navar*. And ſo downward all along they are ever the firſt order of Men in the Parliaments, and are put before the Lords Temporal, and ſo they muſt be **Peers of Parliament.**

2. For that they are in ſeveral Rolls of Parliament, expreſly ſo called in the caſe of *Mautravers*. **Pieres de la terre et Juges du Parlement.** Vid. Caſe before, in the Caſe of *Gomenitz* and *Weſton*. 1 *Ric.* 2. **Quelle Petition &c. commandez en ceſt Parlement per les prelatz et Seignures Pieres du Parlement**, as before in that caſe. Nay long before this they affirm to the Lords Temporal in Parliament, *H.* 2. as Mr. *Selden* reports, [the Parliament was held at *Northampton.*] **We ſit not here as Biſhops only, but as Barons, we are Barons and you are Barons, here we ſit as Peers.** In the Proteſtation of the 11 *Ric.* 2. ſo often ſpoken of. **Ut pares regni predicti:** again in the ſame, **ut pares regni predicti more ſolito in tenere & jure paritatis noſtre & cujuſlibet noſtrum intereſſendi, &c. ſemper ſalvis, &c.** In the Parliament of 28 *H.* 6. **In caſe of our Peerage hereafter as fraly and as largely, &c.** Where both Eſtates Spiritual and Temporal, do joyn in that Proteſtation, which (as before) the Lords Temporal would never have done to their diſadvantage, if the Biſhops had not had equal right both in the Peerage and Judicatory.

3. The Biſhops are Peers for, [as hath been proved] they do not only ſit in Houſe of Peers, and are ſo called in the Rolls of Parliament, but that they have Judged as Peers upon Peers of Parliament. Upon the **Lord Latimer** 50. *Ed.* 3. Upon *Michael de la Pole* 10 *Ric.* 2. Upon the Lords in the Parliament of the 25th. of the ſame King, by their Proxies. Upon the **Earl of Northumberland**, 5 *H.* 4. **Upon William de la Pole** in the 28 *H.* 6. *&c.* Laſtly they are proved to be Peers by the Statute of the 25 *Ed.* 3. **Teignent lour temporaltes du Roy en chief et pertant ſunt Pieres de la Terre.** For that *they hold their Temporaltys in* chief, and are therefore Peers *of the Land.* Which our Author ſaith are *Expreſſions* by the by, *obiter dicta.* Than which I think nothing can be more cloſe and home, for that is the reaſon of the Petition that they are **Peers**, though not of *Perſonal Nobility*, but only *Feodal.* Which diſtinction if theſe Authors had well underſtood, they would eaſily have apprehended why Biſhops are Tryed by a Jury of Commons, which is a thing *de Jure Communi*, and doth not reach their Peerage, as Mr. *Selden* clearly proves in his Baronage. p. 143. Whither I refer theſe Authors where they will find their Arguments anſwered, and this matter fully proved, that the Biſhops are Peers of the Land, and that particularly *& in terminis*, that the Argument is naught, to ſay **Spiritual Barons are not Peers, and therefore not to be Tryed by their Peers**, for ſaith he, **the antecedent is falſe**, l. c. and that they are Tryed by Men of the ſame condition ſaith he: is for that the **Statutes** muſt be Interpreted according to practice and the known uſe of **legal Proceedings**, pag. 153. ſo that it is a matter *de jure communi*, that the Biſhops are ſo Tryed and the reaſon of the uſage I take to be for that *their Blood is enabled, they being only Foedal Barons.* And alſo that the Biſhops are Peers is proved by the Common Law very fully in the *Honours of the Clergy*, p. 30. And in Mr. *Seldens* Baronage, p. 143, 144, *&c.* And all the anſwer our Author the Gentleman in his Letter gives to theſe, is that the Judges only had a mind *to Complement the then potent Clergy*, &c. p. 104. I had thought the Judges had been ſworn to do Juſtice and not to Complement, and favour any perſons of what rank ſoever they be of, if the Author is of another Opinion, I cannot help it.

2. That the Lords Spiritual and Clergy (whoſe Procurators according to that ancient Piece *Modus tenendi Parliamentum*) are ever held Members of the Parliament

though denied to be so by the Author, p. 88. for that they act not in Legislation; which by the way, is no reason, for that they may well be said to be a part of the Parliament, for that they represent the lesser Clergy, in giving of Aids and Subsidies; who else were in a worse condition than the meanest Clown who can expend 40 *s. de clare per Annum*, having no body else there to represent them, but their Proctors as before. That the Bishops and Clergy, I say, are a Third Estate, not only of the Kingdom, but of the Parliament too, (for here the Author is very Metaphysical in the Distinction of these two, which yet are but one and the same; and so as we use to say, he makes a Distinction without a Difference) I hope will be clearly proved from the Bill exhibited in the Roll of Parliament 1 *Ric.* 3. *Die Veneris tertio die Januarii, Anno Regni Regis* Ric. 3. *primo &c.* **Memorand Quod quedam Billa exhibita fuit**, *Be it remembred that a certain Bill was exhibited &c.* containing in writing certain Articles of the Tenor under written on the behalf and in the name of **the Three Estates of this Realm of England**, that is to say, the Lords *Spiritual* and *Temporal*, *and of the* **Commons by Name**. *Now forasmuch as neither the said Three Estates, nor the said Persons which presented and delivered, &c. were Assembled* **in form of Parliament**, *by reason whereof diverse Doubts and Questions, &c. have been moved, &c. Therefore to the perpetual Memory of the Truth & Declaration of the same be it Ordained, Provided & Established in this* **Present Parliament**, *That the tenor of the said Roll with all the Contents of the same, presented as is above said, in the Name and in the behalf of the said* **Three Estates out of Parliament: Now by the said 3 Estates assembled in this present Parl'** *and by the Authority of the same, be it Ratified, Recorded, Enrolled, Approved and Authorized to the removing of the occasion of Doubts, &c.* Where the Estates of the Land or Realm and of the Parliament, you see are the same, for all the niceness of our Author's Distinction, *Q. E. D.* And as to his Objection, That if the Bishops are an Estate in Parliament, then it would follow, That no Law could be made without their consent: The Consequence is ill; for here the Custome of Parliament, (and he knows that **Consuetudo Parliamenti est Lex Parliamenti**) is otherwise: and that the Two Estates of Lords Temporal and Spiritual make but one House of Peers, where they Vote intermixedly, and that neither have a Negative on the other, but all things pass there by Majority of Votes. And so in the next place I come to take an Account of a Book Entituled A **Discourse of the Peerage and Jurisdiction of the Lords Spiritual in Parliament**, *&c.* And here I fancy my self to be in *Aristophanes* his Νεφελοκοκκυγία, A City of certain Birds in the Clouds, where Cases and Discourses are mooted purely Airy, having no other bottom than Vapor, Smoke and Cloud; this Discourse (he pretends) stands upon these two Legs, and whether they are able to support the Body of this Book comes now to be considered.

The first is *that the Lords Spiritual Voting in Capital Cases, is contrary to the intent and meaning of* Magna Charta.

The second *that it is contrary to the known Practice of all Ages to this day* The first he endeavours to prove by reason, the second by Precedents, let us see how well he acquits himself. For the first, *'tis ordain'd saith he*, p. 2. *by the* 29th. *of* Magna Charta, *that Nullus liber homo capiatur* vel *imprisonetur* &c. *Aut utlegetur, aut exuletur, aut aliquo modo destruetur nec super eum ibimus* nec *super eum mittemus*, nisi *per legale judicium parium suorum.* Where saith he it is *evident that every Judge must be a* Par *to the Prisoner but a Spiritual Lord* saith he, *is not invested with that Parity which is requisite by* Magna Charta, *to constitute him a Judge upon the Life of a Temporal Lord.* And p. 4, and 5, he gives us the reason why he is not so invested with such a Parity, because [the Lords Spiritual Peerage,] is only *prædial and fædal*, not *personal*, his Blood being not enobled, but his Nobility accrewing to him only *ratione Tenuræ*, because of his Barony, and so not having Noble Blood to loose, he cannot be a Judge of Persons of Personal Nobility.

I answer 1. How if it appear that Persons whose Blood were no ways enobled, [such were *Bannerets* and Knights of the Bath,] have actually and *de facto* Judged of such whose Blood (as he saith) were enobled, and were Men of Personal Nobility? Consuetudo

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tudo Parliamenti eſt Lex Parliamenti. What then will become of this Worthy Authors aery argument. I muſt and ſhall tell him that they which are called by their Prince into the Houſe of Peers, though perhaps *pro ea vice tantum*, it may be twice or thrice, and never afterwards, and therefore their Blood being not Enobled nor Men of that Perſonal Nobility, as our Author ſpeaks, yet theſe Muſt have Judged upon Temporal Lords, *v. g.* Upon the Earl of *Winch*, *&c.* And upon others in other times. Such were *John Mautravers Junior* 4 E. 3. Sr *John Peach* in the ſame Parliament, *Radalph de Camoys* no Baron, was in the ſame Parliament. *John de Cromwel* was only a Knight in the ſame Parliament, for that Family were not yet Barons. *Thomas Bardolf* in the ſame only a Banneret, neither of the *Fairivals* were in that Parliament Barons, *William le Blount* in the ſame Parliament no Baron. *Hugh Penitz* only Knight of the Bath, and Banneret in the ſame Parliament, more particularly *John* Lord *Gominitz* was Judged. 1 *Ric.* 2. (the Caſe as before was Capital,) by Sr. *Richard le Scrope* Steward of the Kings Houſe: Duke of *Lancaſter*, Earles of *Cambridge*, *March*, *Arundel*, &c. **Et pluſours autres Seigneurs Barons & Bannerets eſteants au dit Parlement, &c.** *And by many other Lords, Barons, and Bannerets, being in the ſaid Parliament*, &c. This Authors miſtake was in this, that he did not rightly underſtand the Conſtitution of the Antient Parliaments, but meaſured them by thoſe of this Age, where none but Barons are uſually call'd into the Houſe of Peers, but formerly it was otherwiſe for any perſon of Note and Eminency, whom the King pleaſed to call, *and of whoſe Wiſdom and Integrity the King had no cauſe to doubt, might have a Summons to Parliament, but their deſcendents were not hereby entituled to an Hereditary Right to ſit,* [*and ſo their Blood was not enobled,*] forasmuch as 'tis evident that not only through the Reign of King *Edw.* 3d. But afterward for a long time ſome there were **who never** *had more than one Summons, and others though more, yet not their deſcendents*, &c. *Sr.* William Dugdale *Baronage*, Tom. 2. *Preface.* Such were thoſe before mentioned, 4. *Ed.* 3. and *Thomas Muſgrave* Summon'd to Parliament, from the 24. to the 47. *Ed.* 3. He was no Baron nor ever after Summon'd, *John de Molins*, 21 *Ed.* 3. was Summon'd never after. *Robert* and *Alexander Hilton* only twice in the 6. and 9 of *Ed.* 3. *John Hauſted* in the 6. 8. and 9. *Ed.* 3. never after, *Roger Laſſels* but once. 23. *Ed.* 1. *William* and *Walter*, *Valvaſors* of *Yorkſhire*, the former in the 28. *Ed.* 1. the latter in the 7. *Ed.* 2. *William Fitz-William*, the 1 *Ed.* 3. never after, *Nicholas Dauney* 1 *Ed.* 3. never after; *Thomas de Pipe*, 1 *Ed.* never after. Sir *Adam de Creting*, 1 *E.* never after. *Hugh de Meiſnil*, 1 *E.* 3. not after. *Roger de Swynnerton*, 11 *E.* 3. Nor he nor any of his Poſterity ever after. *William de Kerderton* was Summon'd from 11 *Ed.* 3. till 34. None of his Poſterity ever after. *Adam de Swillington* from 20 *Ed.* 2. till 2 *Ed.* 3. never after, nor any of his Poſterity.

And the like I might add of ſeveral others of the Parliament of 4 *Ed.* 3. wherein there were five or ſix Capital Judgments, and the far greater number of thoſe who were ſummoned to the Higher Houſe were Peers, though no actual Barons, who yet were Charged with the Articles againſt *Mortimer* and *Beresford*, and therefore Judged upon them. The Words of the Record are, **Les queux Countes, Barons & Peers les Articles per eux examinez revindrent.** *Which Earls, Barons Peers having examined the Articles return'd.* Where the Word **Peers** following that of **Barons**, muſt be underſtood as is uſual, of perſons of inferior Rank and Order to the Barons, and therefore of none other than the perſons before ſpoken of

2. I anſwer, The Words of *Magna Charta* are general; *Non capiatur, impriſonetur, ut legetur, non ſuper eum ibimus, &c.* and do not only reſpect Capital Caſes, but others, which may be of Miſdemeanors, where Judgment may end in Fine or Ranſom, *&c.* At which yet the Biſhops always acted, as the Author will confeſs: Such were the Caſe of the Lord *Latimer* 50 *Ed.* 3. of the Biſhop of *Norwich*, 7 *Ric.* 2. *Michael de la Pole* 10 *Ric.* 2. *& William de la Pole* 28 *H.* 6. *&c.* So that by the Authors Argument they muſt be excluded not only in Capital, but other Caſes alſo, againſt the Law and Cuſtom of Parliament. And here our Author hath made himſelf an eminent and ſignal Example of a perſon vainly arguing from a Statute, when the Matter of

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Fact was otherwiſe; and therefore the greater part of his Book is inſignificant; He might have known that *Lex currit cum praxi*; That *Practiſe and Uſage is the beſt Commentſon the Law.* It is not what he thinks by an inconſequential way of Arguing, to be the meaning of the Law, but 'tis the Cuſtom and Uſage which is the beſt Interpreter of the Law, and that would have taught him the true meaning of that Article of *Magna Charta*, upon which he hath ſo weakly and unfortunately argued.

I omit to ſpeak to what he hath taken out of Mr. *Selden*'s Baronage about the Trial of Biſhops by a Jury of Commoners, for that (as Mr. *Selden* there ſaith, and at large proveth) maketh nothing againſt their Peerage; and I add Jurisdiction alſo; for that (as is before ſaid out of Mr. *Selden*, where our Author might have ſeen his Anſwer) is a thing *de Jure Communi*, that Biſhops are ſo tried, and the reaſon (I conceive) is well given (*viz.*) Becauſe their Nobility is not hereditary, but only *fœdatory*, *& ratione Tenuræ*. So that this Author might have ſaved himſelf the labour of replying to the Anſwers he mentions, *p.* 9. about *their degradation, and not anſwering before Lay-Judges, &c.* for this is abſolutely the *Magical Combat* in *Apuleius*; Where *the man thinking he had fought with his Adverſary all night, in the morning he found himſelf engaged with a few emptyBladders.* No body I know of is here his Adverſary, and if he pleaſe he may fight on, and reap (if he finds any) the Benefit of his Conqueſt.

2. He undertakes to prove that the Biſhops Voting in Caſes Capital is againſt the practiſe of all Ages to this day; and that here he is as unfortunate as before, is at large proved through moſt of the foregoing Trials in this Book particularly treated of; and whither for a full Anſwer he is remitted; whence I do believe and hope that both the Reader and theſe Authors alſo will receive full ſatisfaction and reſolution of the *Vexata Quæſtio.*

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